SUBJECT INDEX

Page

Law of Louisiana creates Consolidated Road Districts for purpose of improving certain specified roads 1

Governing body of Consolidated Road District a quasi-judicial or administrative board. Not clothed with full legislative power over subject of roads 5

Road Districts quasi-public corporations. Lowest type of governmental agency 6

Road Districts not clothed with such legislative and discretionary power as to make their decision a legislative determination 8

Complainant entitled to hearing of some sort 9

Case of Browning vs. Hooper controlling 9

Road taxes levied in Louisiana with idea of imposing them on property benefited 10

Louisiana Courts hold hearing in special taxing districts should be afforded prior to their creation 11, 12

MAY IT PLEASE THE COURT:

We desire to submit this supplemental brief to present some additional reasons why your Honors should grant the appellant relief in this case and to modify to some extent a statement made by the writer during the course of oral argument.

INDEX OF AUTHORITIES CITED

TITLE

	Page
Acts of Louisiana, Act 118 of 1921	2, 4, 11
Browning vs. Hooper, 269 U. S. 396, 70 L. E. 330	9
Cooley on Taxation, Sec. 130	6
Fallbrook Irrigation District vs. Bradley, 164 U. S. 112; 41 L. E. 387	9
Farmer vs. Miles, 106 La. Ann. 340	6
K. C. S. vs. Ogden Levee District, 15 F. (2d) 637	8
Londoner vs. Denver, 210 U. S. 377; 52 L. E. 1112	8
Norwood vs. Baker, 172 U. S. 269; 43 L. E. 443	9
Parish vs. Gaddis, 34 La. Ann. 931	7
Shaw vs. Board of Commissioners, 138 L. 932, 70 Sou. 910	11
Turner vs. Wade, 254 U. S. 65; 65 L. E. 136	9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1927

No. 263

IN EQUITY.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
Defendant in Error,

versus

J. H. NATTIN, TAX COLLECTOR, CONSOLIDATED ROAD DISTRICT OF THE PARISH OF BOSSIER, LOUISIANA,
Defendant-Appellee.

Appeal from the District Court of the United States for the Western District of Louisiana.

Honorable Rufus E. Foster, Circuit Judge, Presiding; District Judges Ben C. Dawkins and Louis H. Burns, Sitting.

SUPPLEMENTAL BRIEF OF PLAINTIFF-APPELLANT.

MAY IT PLEASE THE COURT:

We desire to submit this supplemental brief to present some additional reasons why your Honors should grant the appellant relief in this case and to modify to some extent a statement made by the writer during the course of oral argument.

The court questioned plaintiff's counsel as to what purposes the proceeds of a consolidated road district bond issue might be expended for under the provisions of the Louisiana law, Act 118 of 1921, Acts of Louisiana. Counsel stated that although the law would seem to permit the funds to be used in the building of roads generally throughout the district, its governing authority had specially designated the roads to be built in its ordinance submitting the bond issue and proposition to create the district to the people. In view of the wording of the law and its purposes, we think it would be proper to state that not only did the police jury select in advance the roads to be improved, extended or constructed, but the law intended and required that it should be created for the express purpose of building and improving specially designated roads.

Section 11 of Act 118 of 1921 reads in part as follows:

> "That the procedure to create a Consolidated Road District should be as follows:
>
> The Police Jury shall pass an ordinance or resolution which shall specify (but need not describe) the existing road districts, or sub-road districts, to be included in the Consolidated Road District, and their respective indebtedness both bonded and floating, shall declare that it is advisable to consolidate the roads of the several districts (and when such is the fact, certain unorganized road territory of the parish) into a consolidated road system; and shall make an estimate of the amount of new money presently needed to enlarge and extend the district system or systems, but the amount of new money when added to the aggregate of the bonded and floating debt of the road districts included in the consolidated district shall not exceed ten per cent of the assessed valuation of the Consolidated Road District."

Since the provision just quoted requires that the Police Jury make an estimate of the amount of money necessary

to enlarge and extend the existing roads in the proposed consolidated district, the law naturally would intend or require that a definite scheme for improvement should cover existing roads in the various districts and specially designated extensions or additions thereto, and should also specify in detail courses, widths, materials, etc., from which accurate estimates might be made as a basis for the bond issue that would be required. If the bond issue is calculated upon certain designated and specified projects, and the approval of the bond issue by the people in and of itself operates to create the district suggested by the Police Jury, then it is reasonable and logical to say that the district was created by law for the purpose of constructing particular roads instead of for the improvement or building of roads generally within its limits.

The Police Jury of Bossier so interpreted the law when it caused a map of the proposed consolidated district to be prepared prior to the election, on which map "was shown the proposed roads to be constructed in said district, and the amount of money to be expended upon each road." (R. 54-55). See Exhibit S opposite page 57 of the Record.

The fact that the bonds are issued and taxes levied for the building of specially selected highways is of some importance in determining the exact nature of the governing authority of the Consolidated Road District of Bossier Parish, Louisiana, and the extent of its legislative powers. We will present your Honors facts and authorities to show that the Police Jury in such capacity assumes the quality of an administrative body of limited authority rather than that of a legislative agency of the State clothed with full legislative power over the subject of roads and highways within its jurisdiction.

Paragraph (a) of Section 11 of Louisiana, Act 118 of 1921, prescribes the first step to be taken in the creation of a Consolidated Road District. The procedure thereafter is as follows:

(b) "Such ordinance (specifying boundaries of district and amount of money required) shall be published once in the official journal of the parish. (Words in parenthesis inserted by writer).

(c) No less than ten days after the publication of such ordinance the Police Jury shall call an election in such consolidated district, which election shall be called, proclaimed, held, and promulgated in all particulars, as near as may be, in the manner prescribed by the general laws in relation to incurring debt and issuing bonds, at which election shall be submitted the question of the isuance of Consolidated Road Disctrict Bonds, (1) in a specified sum (which shall be the aggregate of the district or districts debt and the new money as declared in the ordinance or resolution described in paragraph 'a' of this section), (2) bearing interest not exceeding a specified rate (which shall be the highest rates which any road bonds of any of the road districts bear), (3) payable annually or semiannually as the police jury may decide, and (4) maturing not more than forty (40) years after the date of the issuance thereof, for the purpose of acquiring and constructing roads the title to which shall vest in the Consolidated Road District.

(d) If a majority in number and amount of the qualified property taxpayers who vote at such election shall vote in favor of such bond, the Police Jury shall promulgate and publish the result of such election and shall thereupon adopt and cause to be published in the official journal two ordinances: the first shall find and declare that the Consolidated Road District has been created, and the second shall provide for the issuance of Consolidated Road District bonds as hereinafter provided."

"Section 12.

After provision is made for the issuance of Consolidated Road District Liquidation Bonds the police

jury, either in the same or in another ordinance or ordinances, may provide for the issuance and sale of Consolidated Road District Bonds of another series to provide new money for road purposes."

"Section 14.

That it shall be the duty of the police jury in apt time and manner to levy a tax sufficient to pay the interest upon all the bonds of each series as it accrues and to pay the principal as it matures."

"Section 18.

That the bonds of any road district or Consolidated Road District, authorized by a majority of number and amount of property taxpayers voting at said election, be, and the same are hereby approved, ratified and confirmed, and their validity shall not be questioned."

From the provisions of the law just quoted, it will be seen that the creation and existence of the Consolidated Road District is made to depend upon the voting of the bond issue by the people. The Police Jury has no power to do anything but suggest to the people the limits of the district, roads to be improved, and amount of bonds necessary for the purpose. The voters themselves (excluding corporations like plaintiff), in any suggested district, by their ballot determine finally all the legislative details concerning the creation of the district. Thereafter the Police Jury acts only as a quasi-judicial or administrative board. It must sell the bonds at par and levy each year a tax sufficient to pay the principal of maturing bonds and all interest charges. It can levy no other taxes and issue no other bonds. The assessment on which the tax is levied is the assessment made by the taxing authorities for purposes of general taxation. It must proceed to carry out the scheme of road improvement and execute contracts for such purpose under the general laws of the State. It can pass no laws for the government or administration of the highways, its powers being entirely restricted to the proper spending of the proceeds of the bond

issue under the limitations and requirements of general state laws.

When the bonds are all spent and paid for the district becomes ipso facto defunct. It is not created for any other purpose than to carry into execution the mandate of the people expressed by their vote at the election.

The Supreme Court of Louisiana has therefore referred to Road Districts as the lowest type of public corporations. In the case of Farmer vs. Myles, 106 La. Ann. 340, 341, this court enunciated the following doctrine:

> "Dillon, in his work on Municipal Corporations, Section 23, draws the distinction between municipal corporations proper, such as a city, and quasi corporations such as counties (parishes)."
>
> "He refers to 'School districts' and to 'road districts' and says 'they are but instrumentalities of the State and the State incorporates them that they may more effectually discharge their appointed duty; they are involuntary political or civil divisions of the State, created by general laws to aid in the administration of government, and so are counties. They are purely auxiliaries of the State, and to the general statutes of the State they owe their creation, and the statutes confer upon them all the liabilities to which they are subject. Considered with respect to the limited number of their corporate powers, the bodies above named rank low in the grade of corporate existence, and have been frequently termed quasi corporations. This designation distinguishes them on the one hand from private corporations aggregate, and on the other hand from municipal corporations proper, such as cities or towns acting under charters or incorporating statutes, and which are invested with more powers and endowed with more functions and a larger measure of corporate life."

The case just quoted applied its ruling to the powers of police juries in respect to roads. In fact the doctrine has been generally applied to police juries in the State of Louisiana. The case of Parish vs. Gaddis, 34 Ann. 931-932, declares:

> "Parishes, like counties in other States, are involuntary political or civil divisions of the State, designed to aid in the administration of government, as State auxiliaries or functionaries, possessing no other powers than those delegated, ranking low down in the scale of corporate existence, and well distinguishable from municipal corporations proper, which are vested with more extensive powers and endowed with more important functions and a larger measure of corporate life."
>
> "They do not acquire for themselves as a political organization. They acquire for the benefit of the public, of the people, particularly the local community, which is represented primarily by the State, and secondarily by them, but so far only as the State has delegated to them the power to do so. As State auxiliaries, they cannot dispose of public property unless with the formal sanction of the State, and even then, in those cases only in which the State, violating no trust and no contract, and infringing the rights of no one, could herself legally act. Creatures, they are wholly dependent upon and controlled by their creator. They have no life, no attribute, no power, no rights, no obligations, but such as have been conferred or imposed upon them."

Cooley on Taxation, Section 130, says: "A specially created district has no inherent power to tax * * * It has no power to tax except insofar as the power is clearly delegated."

In view ofthe fact that the Police Jury of the Parish, either in the creation or in the governing of a Consolidated Road District has no exclusive legislative power whatever, all of its powers in this respect being initiatory and subject to the will of the people; and in view of the fact that the Louisiana law limits its authority to such an extent that its actions are purely administrative, we submit that the rule announced in the case of Londoner vs. Denver, 210 U. S. 377, 52 Law Edition 1112, is applicable. We read what your Honors said in that case:

> "Where the legislature of a State instead of fixing the tax itself, commits to some subordinate body the duty of determining whether, in what amount, and upon whom it shall be levied, and of making its assessment and apportionment, due process of law requires that at some stage of the proceedings, before the tax becomes irrevocably fixed, the taxpayer shall have an opportunity to be heard of which he must have notice, either personal, by publication, or by a law fixing the time and place of the hearing. But even here a hearing, in its very essence, demands that he who is entitled to it shall have the right to support his allegations by argument however brief; and, if need be, by proof, however informal."

Commenting upon the case of Londoner vs. Denver and other decisions of the Supreme Court of the United States, the Federal Circuit Court for the Eighth Circuit said, in K. C. S. vs. Ogden Levee District, 15 Fed. (2nd) 637:

> "Such hearing is not a mere matter of favor or grace with those entrusted with the assessments."

Your Honors have applied the rule stated in Londoner vs. Denver to various subordinate bodies as follows:

Municipal Corporations—Cities—Londoner vs. Denver, 210 U. S. 377; 52 L. E. 1112.

Incorporated Levee District K. C. S. vs. Ogden Levee District, 15 F. (2d) 637.

nty Board as Governing Authority for Drainage District, 164 U. S. 112; 41 L. E. 387 (Fallbrook Irrigation District vs. Bradley).

rd of Assessors with full power—Turner vs. Wade, 254 U. S. 65; 65 L. E. 136.

Road District—Body corporate with full powers—Browning & Hooper, 269 U. S. 396; 70 L. E. 330.

Municipal Corporations—Cities—with full powers over streets—Norwood vs. Baker, 172 U. S. 269; 43 L. E. 443.

We, therefore, submit that in the creation of the Con-dated Road District of Bossier Parish, Louisiana, com-inant was entitled to a hearing of some sort before the trict was created, and that this case is, with slight ex-tion, identical in principle as the case of Browning vs. oper, 269 U. S. 396, 70 Law Edition 330, wherein your nors held that a taxpayer was entitled to a hearing be-e his property was included in and taxed by a road dis-t similarly created. In the Browning case no legislative ly determined the district, or the amount of the bonds, the tax. The district was created on petition of a num-of the taxpayers within the district, and the amount the bonds and tax were likewise subject to the vote of people just as in the case here.

In the Browning case, the road district did not coincide h the limits of any political subdivision of the State; ther does the defendant district here coincide with any itical subdivision of the State of Louisiana.

In both cases, the road districts, although endowed h corporate existence under the statutes of the State, tomatically cease to exist when their indebtedness is fully d.

Neither here nor in the Browning case was any notice hearing provided in the statute authorizing the creation a district and in both cases the powers and duties of the verning body of the district following the vote of the peo-became merely administrative and perfunctory.

We, therefore, submit that the complainant was entitled to a hearing of some sort at some stage of the proceedings for the creation of the Consolidated Road District of Bossier Parish, Louisiana, and that Act 118 of 1921 of the Legislature of Louisiana in denying its right to such a hearing, denies it due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The complainant should have been afforded a hearing as to whether or not its property should be included within the Consolidated Road District, or as to whether the district should be created at all. It should have had an opportunity to present evidence not only on these points, but on the question as to the amount of bonds to be issued if its property was to be included in the district, and consequently the amount of the tax which would be levied annually on its property.

In our original brief, we went rather fully into the proposition that such taxing districts, while levying an ad valorem tax generally on all property in any district were nevertheless created with the idea of special benefit to the property located within the district. We will advance some additional reasons why benefits should be considered, and why the complainant should have had an opportunity to be heard on this subject.

Act 118 of 1921 in Section 2, provides for a hearing to all interested taxpayers whenever a road district, or a subroad district is created. However, we called the attention of the court to the fact in our original brief, that no such hearing was provided when a Consolidated Road District was created, although such Consolidated Road District is a separate entity from the road districts of which it may be composed, and is created for the incurring of a new indebtedness and a new tax on the property within its imits. The Act of the Louisiana Legislature just referred to, after providing for a hearing in Section 2, makes the following provision concerning the hearing to be had in the creation of

road and sub-road districts as contradistinguished from Consolidated Road Districts:

> "The Police Jury shall hear all objections at the time appointed, or at any time to which the hearing thereof may be adjourned and pass upon the same, and its decision thereon shall be final and conclusive.
>
> At such hearing the Police Jury may change the boundaries of the proposed district by excluding therefrom the lands of the persons objecting or by including therein the lands of persons petitioning to be included therein, and after disposing of all objections, the Police Jury shall, if it determine to create such district, adopt a resolution finally fixing the general boundaries of the district."

The section just quoted is obviously written for the benefit of those taxpayers whose property might be included in a road district without a resultant benefit. Otherwise, there can be no good reason for hearing the objections of taxpayers to the creation of the district, except the reason that without such a hearing due process of law would not be guaranteed the taxpayer. The only objection that Section 3 of the Act would contemplate from any taxpayer would naturally be that his property should not be taxed for the building or improvement of the roads. Naturally, the only objection that the taxpayer would urge to the inclusion of his property in the district would be that it was too far away from the contemplated roads, or that for some other reason peculiar to his property, it cannot be benefitted by the improvement.

The Supreme Court of Louisiana has held that in taxing districts of this sort a hearing on the question of benefit is necessary to due process of law. In the case of Shaw vs. Board of Commissioners, 138 La. 932, 70 So. 910, the Louisiana Court said:

> "Plaintiff cannot be compelled to pay for the draining of other lands in the district in which his property has been illegally and arbitrarily included,

> and when they are not being benefitted directly or indirectly by drainage. If that were done, it would be the taking of plaintiff's property without due process of law."

It is true that in the cited case a drainage district was involved, and the district was to include lands benefitted by the drainage, but the point of the case is that taxpayers were entitled to a hearing in a Louisiana taxing district of this sort before the district was finally created, any legislative determination of the Police Jury to the contrary notwithstanding. We think this case is authority in Louisiana for the proposition that the courts should set aside the creation of any special taxing district where a hearing was not afforded a taxpayer concerning the inclusion of his property, although the governing authority of the district happens to be the Police Jury of the parish, and the ad valorem tax happens to be an ad valorem tax levied generally on all property within the limits of the district.

This being so, the District Court erred in holding that complainant was not entitled to a hearing and that benefit to its property would be conclusively presumed. In any event, since the result of the tax amounts to a confiscation of complainant's earnings and property in the form of a tax for the construction of a completing highway system, we submit that the complainant is entitled to an injunction to restrain the collection of the tax as against its property within the district.

Respectfully submitted,

WILKINSON, LEWIS & WILKINSON,
Attorneys for Plaintiff and Appellant.

J. R. TURNEY,
J. D. WILKINSON,
C. H. LEWIS,
W. S. WILKINSON,
Of Counsel.

FEB 18 1928
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 263

IN EQUITY.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
Plaintiff in Error,

versus

J. H. NATTIN, TAX COLLECTOR, CONSOLIDATED ROAD DISTRICT OF THE PARISH OF BOSSIER, LOUISIANA,
Defendant in Error.

Appeal from the District Court of the United States for the Western District of Louisiana.

Honorable Rufus E. Foster, Circuit Judge, Presiding; District Judges Ben C. Dawkins and Louis H. Burns, Sitting.

BRIEF OF DEFENDANT IN ERROR.

MILLING, GODCHAUX, SAAL & MILLING,
A. M. WALLACE,
Solicitors for Defendant in Error.
ROBERTS C. MILLING,
A. M. WALLACE,
R. E. MILLING, JR.,
Of Counsel.
February 20, 1928.

MONTGOMERY-ANDREE PRINTING CO. INC., 307 CHARTRES, N.O.

SUBJECT INDEX.

Page

THE FEDERAL AND STATE GROUNDS OF ERROR URGED BY PLAINTIFF'S COUNSEL ..... 2 to 3

I.

VIOLATION OF FEDERAL CONSTITUTION ..... 4 to 88

A—WANT OF A HEARING ..... 4 to 67

Propositions "First" and "Second" Submitted for Argument ..... 5 to 6

FIRST—*Plaintiff in Error Was Entitled to No Hearing* ..... 6 to 37

Ruling of the District Court and Wight Case ..... 6 to 13

History of Louisiana Legislation, Constitutional and Statutory, and of District. 13 to 21

This Tax a General Tax and Not a Local Assessment, and Authorities ..... 21 to 26

Manner in Which Taxes Are Levied and Collected in Louisiana ..... 26 to 27

Full Legislative Power to Create Road Districts, To Issue Bonds and Levy Taxes, Vested in Police Jury by Constitution and Statutes of the State, and No Hearing Required. Authorities ..... 27 to 30

Determination by Police Jury Has the Effect of Legislative Determination and No Hearing Allowed ..... 30 to 35

SUBJECT INDEX—*(Continued)*

Page

Browning v. Hooper, Archer County Case Distinguished .....35 to 37

SECOND—*Statute Provides For, and Hearing In Fact Allowed, Prior to Imposition of Taxes* .....37 to 67

Provisions of Act 118 of 1921.....38 to 39

Statute Construed by State Court to Mean Hearing Required .....39 to 42

Rule of Law Is Any Hearing Prior to Imposition of Tax Sufficient. Authorities .....42 to 47

Right to Hearing Before a Court Is Sufficient .....47 to 51

State Constitution and Statutes Allow 60 Days from Promulgation of Election Within Which Party in Interest May File Suit .....51 to 53

Construction of Statutes by State Court..53 to 63

Sixty-day Notice Reasonable.....64 to 65

Notice by Publication Sufficient.....65 to 67

B—ANSWER TO ARGUMENT THAT HIGHWAY A COMPETING SYSTEM AND NO BENEFITS .....67 to 75

Under the Law and the Facts of This Case Building of Roads Will Benefit District and All Property Therein.....67 to 72

SUBJECT INDEX—*(Continued)*

Page

No Allegation of Arbitrary Abuse or Fraud, Therefore Claim of Want of Benefits Cannot Be Considered.....72 to 74

C—INEQUALITY OF ASSESSMENT.....75 to 87

Pleadings Not Sufficiently Broad to Embrace This Question, As Deprivation of the Equal Protection of Law Not Directly Pleaded 75

Under Decisions of Supreme Court of United States Railroad May Be Assessed on Different Basis from Other Lands .....75 to 78

Equity Will Not Assume Jurisdiction to Reduce An Assessment .....78 to 82

History of Law in Louisiana With Reference to Assessment of Property and Time Within Which Suit to Correct Assessment Should Be Filed.....82 to 84

Ruling of District Court on This Question. Authorities of United States Supreme Court on the Question.....85 to 87

D—ANSWER TO ARGUMENT THAT LEVY OF TAX A BURDEN ON INTERSTATE COMMERCE .....87 to 88

SUBJECT INDEX—*(Continued)*

Page

II.

CLAIMS OF ILLEGALITY UNDER STATE STATUTE ..... 88 to 96

A—CLAIM THAT DISTRICT EMBRACES PRACTICALLY WHOLE OF BOSSIER PARISH ..... 88 to 93

This Right of Action Prescribed by State Statute After Expiration of 60 Days.. 88 to 89

No Question of Public Policy Involved, As No Violation of Present Constitution.. 89

Matter of Fixing Limits Wholly Within Power of Police Jury, and the Court Should Not Entertain Action in Absence of Charge of Fraud..... 90 to 93

This Constitutes Collateral Attack Upon District and Should Not Be Permitted 93

B—THE ANSWER TO THE CONTENTION THAT TAX LEVY EXCESSIVE..... 94 to 96

INDEX TO AUTHORITIES CITED.

	Page
Act of Louisiana Legislature No. 170 of 1898, Sec. 14	83
Act of Louisiana Legislature No. 170 of 1898, Sec. 22	83
Act of Louisiana Legislature No. 170 of 1898, Sec. 24	84
Act of Louisiana Legislature No. 122 of 1900	82
Act of Louisiana Legislature No. 70 of 1904	82
Act of Louisiana Legislature No. 63 of 1906	84
Act of Louisiana Legislature No. 194 of 1906	83
Act of Louisiana Legislature No. 256 of 1910	16, 57
Act of Louisiana Legislature No. 317 of 1910	57
Act of Louisiana Legislature No. 183 of 1914	16
Act of Louisiana Legislature No. 30, Extra Session of 1917	16
Act of Louisiana Legislature No. 120 of 1918	82
Act of Louisiana Legislature No. 211 of 1918	82
Act of Louisiana Legislature No. 222 of 1918 Sec. 10	83
Act of Louisiana Legislature No. 231 of 1920	83
Act of Louisiana Legislature No. 46 of 1921, Sec. 1	18
Act of Louisiana Legislature No. 46 of 1921, Sec. 35	26
Act of Louisiana Legislature No. 46 of 1921, Sec. 43	52, 88
Act of Louisiana Legislature No. 118 of 1921	18, 38, 53, 89
Act of Louisiana Legislature No. 97 of 1924	84

AUTHORITIES CITED—*(Continued)*

Page

Altschul v. Giddings, 86 Fed. Rep., 200..... 81
Baker v. Druesedow, 163 U. S., 137, 68 L. Ed., 212, 214 87
Branson v. Bush, 251 U. S., 182, 64 L. Ed., 215, 221 67
Brock v. Police Jury, 159 La. Rep., 66..... 56
Browning v. Hooper, 269 U. S., 396, 70 L. Ed. 330 34
Burnham v. Police Jury of Claiborne Parish, 107 La. Rep., 513, 516..... 91
Campbell v. Olney, 262 U. S., 352, 354.....35, 64
Chicago, Burlington & Quincy Ry. Co. v. Babcock, 204 U. S., 585, 51 Law Ed., 636.....79-80
Chiara v. Lafourche-Terrebonne Drainage District, 156 La. Rep., 422..... 56
Cincinnati N. O. T. & P. R. R. Co. v. Kentucky, 115 U. S., 321, 324, 29 L. Ed., 414, 418 .....42, 50, 58, 75, 76
Coguenhem v. Avoca Drainage District, 130 La. Rep,. 323 .....15, 57
Cooley on Taxation, Vol. IV, Fourth Edition, page 3323, Sec. 1646..... 78
Cooley on Taxation, Vol. IV, Fourth Edition, page 3337, Sec. 1650..... 79
Cooley on Taxation, Vol. IV, Fourth Edition, pages 3329-30, Sec. 1648..... 81
Constitution of Louisiana 1898, Articles 281, 292 13-14
Constitution of Louisiana 1913, Articles 281, 292 .....14, 22
Constitution of Louisiana 1921, Par. (a), Sec. 14, Art. XIV 3, 22

AUTHORITIES CITED—*(Continued)*

Page

Constitution of Louisiana 1921, Par. (c), Sec. 14, Art. XIV.....17,22

Constitution of Louisiana 1921, Par. (j), Sec. 14, Art. XIV 22,26

Constitution of Louisiana 1921, Par. (n), Sec. 14, Art. XIV 52,88

Davidson v. New Orleans, 96 U. S., 97, 104, 24 L. Ed., 616, 619.....45,66

Drouin v. Board of Directors Public Schools Parish of Avoyelles, 136 La. Rep., 393.... 91

Dundee Mfg. Co. v. Charlton, 32 Fed. Rep., 192 82

Fontenot v. Miller Gravity Drainage District, 159 La. Rep., 302..... 56

Hagar v. Reclamation Drainage District No. 108, 111 U. S., 701, 708, 28 Law Ed., 569, 572 47,65,66,86

Hancock v. Muskogee, 250 U. S., 454, 457, 63 L. Ed., 1081, 1083.....29,32

Hardin v. Police Jury, Parish of Vernon, 155 La. Rep., 899 39,40,55,58,89

Hazard v. O'Bannon, 38 Fed. Rep., 220..... 80

Hebert v. State of Louisiana, 272 U. S., 312, 71 L. Ed., 271 41

Henderson Land & Planting Co. v. Police Jury, 159 La. Rep., 733..... 56

Kansas City Southern Ry. Co. v. Road Improvement District No. 3, 266 U. S., 376, 69 L. Ed., 335, 341 72

Kelly v. Pittsburg, 104 U. S., 78, 26 L. Ed., 658 80

Lacey v. McCafferty, 215 Fed. Rep., 352..... 80

AUTHORITIES CITED—*(Continued)*

Page

Lent v. Tillson, 140 U. S., 316, 328, 35 L. Ed., 419, 425 ..... 50, 64, 65
Londoner v. Denver, 210 U. S., 373, 385, 52 Law Ed., 1103, 1112 ..... 46, 66
Louisiana & N. W. R. Co. v. State Board of Appraisers, 120 La. Rep., 471, 472 22
Louisiana Ry. & Nav. Co. v. Madere, Sheriff, 124 La. Rep., 635 23
Merchants & Manufacturers' National Bank v. Pennsylvania, 167 U. S., 461, 42 L. Ed., 236, 238 65
Missouri Pacific Ry. Co. v. Western Crawford Road Improvement District, 266 U. S., 187, 69 L. Ed., 237 74
Mount St. Mary Cemetery Assn. v. Mullins, 248 U. S., 501, 63 L. Ed., 383 74
Munson v. Board of Commissioners, Atchafalaya Basin Levee District, 43 An., 15, 29 21
Paulson v. Portland, 149 U. S., 29, 37 L. Ed., 637 66
Puffer Mfg. Co. v. Robertson, 248 Fed., 463 80
Roberts v. Evangeline Parish School Board, 115 La. Rep., 331 ..... 54, 58
Shautin v. Board of Commissioners, St. Landry & St. Martin Drainage District, 160 La. Rep., 1036 60
Union Pacific v. Christianson, 275 Fed. Rep., 6. 80
Valley Farms Co. v. Westchester County, 261 U. S., 155, 164, 67 L. Ed., 585, 590 ....28, 29, 85
Wight v. Police Jury of Avoyelles Parish, 264 Fed. Rep., 707 ..... 6, 33
Withnell v. Reucking Construction Co., 249 U. S., 63, 69, 63 L. Ed., 479, 482 30

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 263

IN EQUITY.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,

Plaintiff in Error,

versus

J. H. NATTIN, TAX COLLECTOR, CONSOLIDATED ROAD DISTRICT OF THE PARISH OF BOSSIER, LOUISIANA,

Defendant in Error.

Appeal from the District Court of the United States for the Western District of Louisiana.

Honorable Rufus E. Foster, Circuit Judge, Presiding; District Judges Ben C. Dawkins and Louis H. Burns, Sitting.

BRIEF OF DEFENDANT IN ERROR.

May It Please Your Honors:

Plaintiff in error has assigned seventeen specific grounds of error. In their brief, counsel have com-

bined these seventeen assignments into six groups, two of which are based upon claims of violation of a State law, and the remaining four are based on alleged violations of the Federal Constitution, the Fourteenth Amendment; the general ground of attack being a claim of deprivation of property without due process of law.

In their brief counsel argue first the alleged violations of the State statutes, and then consider the questions arising under the Constitution of the United States. In presenting our reply to counsel's argument we prefer to argue first the grounds of attack which are based upon the Federal Constitution, and then consider the questions of local law. Therefore, we group counsel's contentions in the order following:

I.

THE VIOLATION OF THE FEDERAL CONSTITUTION.

A. That neither the State statutes provide for, nor was the complainant given notice of, or allowed a hearing prior to the creation of the District and the voting of the bond issue and taxes, with the result that it has been deprived of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

B. The highways to be constructed compete with the plaintiff in error in the operation of its railroad, with the result that it receives no benefit from the construction of the roads and, therefore, is deprived of its property without due process of law.

C. The complainant's property is valued upon the assessment rolls for assessment purposes at a larger percentage of its cash valuation than the property of local landowners, with the result that it pays a larger proportion of taxes based upon this assessment than the other property owners and it, therefore, is deprived of its property without due process of law.

D. That these taxes impose an undue burden on interstate commerce.

II.

THE VIOLATION OF STATE LAW.

A. That the Consolidated Road District of Bossier Parish was improperly and illegally created by the Police Jury of that Parish, contrary to the statutes of the State of Louisiana and particularly Act 118 of the Acts of 1921, in that the District embraces practically the whole of one parish, whereas it is claimed that the statute prohibits the creation of a Road District from the whole of any one parish.

B. That the taxes sought to be enjoined were illegally levied in the year 1926 to pay interest falling due on bonded indebtedness in the year 1927. This, it is claimed, does violence to the Constitution and Statutes of Louisiana and particularly Paragraph (a) of Section 14 of Article XIV of the Constitution of 1921.

We will argue each of the above questions in the order stated.

I.

VIOLATIONS OF THE FEDERAL CONSTITUTION.

A.

WANT OF A HEARING.

Counsel, in their brief, contend that the plaintiff in error was at no stage of the proceedings afforded either a notice or a hearing as to whether its railroad should have been included in the Consolidated Road District, or as to whether the bonds of that District, aggregating $1,630,000.00, should have been issued and the necessary taxes levied annually to pay same in principal and interest. The District Court held that complainant was entitled to no hearing on these questions; that even if it were, the statutes of Louisiana had provided for a hearing, of which it had failed to take advantage within the period of time provided by those statutes, with the result that the right to institute the proceedings had preempted or prescribed.

We submit that the ruling of the District Court in both respects was eminently correct and proper, and that the claim of a deprivation of property on the ground of want of hearing or notice is without merit. In answer to counsel's argument on this question we submit the following propositions:

First. The plaintiff in error was entitled to no hearing prior to the organization of this district and the imposition of the tax herein called in question, for the reasons that the Consolidated Road District of

the Parish of Bossier is a political subdivision of the State of Louisiana created by the Police Jury of the Parish of Bossier under express power conferred upon it by the Constitution and statutes of Louisiana; it is an agency used by the State for the construction of improved highways, a purpose public in its nature and not merely for the improvement of the property in the District; that the tax levied by the Police Jury was levied upon all property therein, based upon its assessed value and without reference to benefits conferred by or arising from the construction of the public roads; that consequently the tax is a general tax and not a local assessment; and that under these circumstances no notice or hearing was required nor could it be demanded as a prerequisite to due process of law under the Federal Constitution.

Second. In the alternative, if notice or hearing were required, the State statute does in fact provide for a hearing on all questions involved in that the statute provides for notice by and a hearing before the Police Jury prior to the creation of a District; which notice the Police Jury did, in fact, give and which hearing was, in fact, allowed; that subsequent to the creation of the District and the promulgation of the election held therein, the statutes and Constitution of Louisiana allow a period of sixty (60) days within which any party at interest may resort to the Courts to contest the legality or the constitutionality of the creation of the District and the imposition of the tax for any cause, after which time the right of action is barred. That these provisions of the Constitution and statutes of Louisiana afforded a reasonable notice and hearing and constitute due process of law.

FIRST.

Plaintiff in Error Was Entitled To No Hearing.

The District Court squarely decided that the plaintiff in error could not raise the question of benefits and was entitled to no hearing prior to the creation of this District and the levying of the tax by the Police Jury. It based its ruling upon a recent decision of the Court of Appeals of the Fifth Circuit, that rendered in the case of *Wight v. Police Jury of Avoyelles Parish, 264 Fed. Rep., 707*, wherein that Court construed the former Louisiana Constitution and statutes. The Court quoted as follows from the opinion of the Court of Appeals in the *Avoyelles Parish* case:

> "Article 292 of the Constitution of Louisiana (which corresponds with Sec. 14, Art. XIV of the Const. of 1921), as published after the convention of 1913, provides for the division of parishes into road districts, and defines the taxing and bond-issuing capacity of the districts. Such legislation as is necessary to make the constitutional provisions effective is provided by Act No. 183 of 1914 and preceding statutes. The Constitution provides that 'Police Juries of this state may form their respective parishes into road districts.' No provision is made by the Constitution or a statute for notice to taxpayers of contemplated action by the police jury in the formation of districts, and in none of the cases under consideration was notice given. Provisions are made for notice of bond and tax elections, and for publication of the result, and the

terms of the law have, in these respects, in each instance been observed.

"It is contended that the law as written and administered is unconstitutional because the law does not require notice (fol. 111) and no opportunity is in fact given the taxpayers to be heard on the questions of the necessity or advisability of the creation of a road district, nor as to boundaries, nor as to whether property to be included would be benefited, nor as to the rate and duration of the tax, or the amount of the bonds.

"Communication, transportation, and commerce are distinguishing elements of civilization. To their development highways are essential. The construction and maintenance of good roads has been accepted universally as a function of government. In the United States there was an early recognition of the right of the general government to construct, or aid in the construction of national highways; but the duty of providing roads was primarily in the states, and in the states the duty remains.

"After the success of the steam railroads was demonstrated, the attention of the federal and state governments was, for a number of years, especially directed towards their development. Aid was extended by the United States, by the states, by counties, parishes and municipalities. Though these highways have, ordinarily, been privately owned, the right of the state to levy taxes and

appropriate property to help in their construction, and to authorize like action by their governmental subdivisions, has almost uniformly been sustained.

"The extraordinary development of the country has brought about conditions under which the needs for transportation facilities can no longer be met by the railroads, and by the inferior dirt roads along which the pioneers have made their weary and wasteful way. Communities which have heretofore recognized the necessity of freeing themselves from the burdens of ignorance, and have provided public schools, have come to realize that getting out of the mud is another essential step to that end. They realize that good roads are the complement of the school house; that isolation is not only an ally of ignorance, but of poverty; that prosperity in farming, trading, or manufacturing waits on transportation and communication.

"A tardy recognition of these fundamental facts has brought about activity in the issue of bonds and the levy of taxes for road purposes. The national government is taxing all the people that great interstate highways may be constructed. States are taxing all their people that roads within the state may be built. In many states subdivisions (fol. 112) have been made, or recognized, and authority given to the taxpayers therein to supplement the efforts of the state and national governments. These subdivi-

sions for roads do not, ordinarily, take the form of improvement districts, in which specific property receiving peculiar benefits is assessed in proportion to the benefits, but are based upon the idea that the taxpayers are doing a proper part in the building up of systems of roads connecting all the sections of the country, and from which they, and everybody else, must derive a benefit.

"In the state of Louisiana, the parish is primarily used as the unit for road purposes; but, lest this division of the state should not bring the necessary local cooperation and supervision, provisions have been made for dividing the parishes into road districts, which, under the terms of the Constitution, became governmental subdivisions of the state. The legislation as to these governmental units recognizes that the needs of the public with reference to roads may be more imperative in some parts of the state than in others. It recognizes, also, that in some parishes or parts of parishes the people may be willing to tax themselves for good roads, while in others the conditions may be such that the taxes cannot be levied.

"The creation of road districts is vested by the Constitution in the police juries of the several parishes. It is a legislative authority doubtless well assigned. It may be assumed that the necessary action can better be performed by a body more familiar with local conditions and needs than by the state

legislature. No taxpayer, and no other person, would ordinarily have a right to interfere with or participate in the exercise of this power. It is conceivable that, even in defining the necessary governmental subdivisions, the people, acting in their primary power in the formation of their Constitution, or acting through their Legislature, or acting through a special legislative body, as in the present case, might lay off the lines in such an arbitrary, unjust way, with such a palpable purpose to destroy or confiscate property, that the protection of the Constitution would not be denied. But such a possible case is not immediately under consideration.

"Complainant makes the proposition that the grant of power to the police jury violates the Constitution of the United States, because no provision is made by which he, as a taxpayer, may be heard with reference to the advisability (fol. 113) of action under the authority, or in the manner in which the authority is to be exercised. There is no constitutional requirement of special notice to any particular individual of contemplated action of a general nature by a governmental body exercising general legislative or administrative functions. The taxpayer in a proposed road district has no more right to notice of a division of the state by the proper authority into road districts than to notice of the creation of a new parish or of the division of the parish into justice wards.

"The governmental functions are carried on in a public way. The forces which exist to compel conformity of public action to public opinion are open to everybody. Except in those cases in which action is contemplated directly affecting the right of an individual, as distinguished from action affecting the public generally, no person has more right to specific notice than all other persons. It is assumed that all people interested in public affairs will acquire a knowledge of what is taking place among those to whom the conduct of public affairs has been trusted. And so long as the officers are acting within their authority, redress for improper conduct is political, instead of judicial.

"There are certain classes of improvement districts, not supported by direct taxation, and with reference to which definite rules for determining benefits and assessments have not been prescribed by the law, where the rule may be different. Drainage, irrigation, sewerage, and street paving districts may be of this character. In districts of this kind, the improvement may be general and the expense met by general taxes, or the improvements may bring general public benefits and also direct benefits to particular property, and the expense be met by general taxes and specific assessments, or the direct benefits to particular property may be so great, as compared to the general benefits,

that equity is approximated by direct assessments in proportion to these direct benefits.

"In those cases in which improvement districts are formed for the direct benefit of the property within the district, and the method of meeting the expenses of the improvement is to determine the specific benefits and to fix upon each property owner an assessment in proportion, and where the law designates no method of determining the benefit and assessment other than by a reference to some commission or other tribunal, a matter of fact is presented directly involving the property rights of individuals, and each person affected must have an opportunity to produce for consideration the facts pertinent to his individual case. If this opportunity is not given, even the fact that the assessment was fair may not meet the objection that the property owner is deprived of a constitutional right.

"Doubtless the laws could provide for road districts, in which improvements would be made for the benefit of specific property and the improvement met by assessments against such property. The Constitution and statutes of Louisiana, however, make no provision for such improvement districts. The districts under consideration are not of this character. They are special taxing districts for the general good. They enable the construction of good roads from which every person in the state may be expected to receive

> some direct or indirect benefit. To undertake to apply to such government activities the rules which are invoked with regard to drainage, irrigation, or other improvement districts of that character would be to entirely destroy the possibility of efficient governmental action."

We have quoted at length from the above opinion of the Judges of the Court of Appeals of the Fifth Circuit, for the reason that the rule announced by them in that case is now the recognized rule to be followed in that Circuit, and if it be found to be correct, it effectively disposes of the principal issue of this case. That the rule of law announced by those Judges is correct, is clearly supported by authority and the history of public road legislation in Louisiana.

Before arguing the principles of law involved in the consideration of this question it might be well to call to the attention of your Honors, the history of the constitutional and statutory legislation had in Louisiana on this important question of the construction of hard-surfaced roads, and the incurring of debt and the imposition of taxes to defray the cost of their construction, as well as to refer briefly to the action taken by the Police Jury of Bossier Parish, pursuant to this constitutional and statutory authority.

The building and improvement of hard-surfaced roads in the State of Louisiana has for a number of years been recognized as a matter of prime importance. The Constitution of Louisiana for the year 1898 contained specific provisions dealing with the

construction of public roads (Articles 291 to 294). Article 292 specifically provided that "*the Police Juries of this State may form their respective parishes into Road Districts.*"

Article 281 of this same Constitution, 1898, as originally written, authorized municipal corporations, *parishes* and drainage districts, when authorized by a vote of property taxpayers, to incur indebtedness, issue bonds and levy and impose taxes for the purpose of defraying the cost of the construction of works of permanent public improvement, including public roads.

In 1910 this Article 281 was amended. Road Districts were granted power, along with municipal corporations and parishes, all being specifically referred to as "subdivisions of the State" to incur debt and issue bonds when authorized by vote of the property taxpayers, who were qualified electors, and the governing authorities were *required*, after these bonds had been issued and sold to levy and impose annually upon all property in the District, an *ad valorem* tax, in addition to all other taxes, sufficient to retire the bonds in principal and interest.

In 1913, the Constitution of 1898 was revised, and the Constitution of 1913 was adopted. Article 292 of that Constitution again expressly declared that "the Police Juries of the State may form their respective parishes into Road Districts." Article 281 of that Constitution again specifically granted to "Municipal corporations, parishes, school, drainage, subdrainage, *road, sub-road,* navigation or acreage *dis-*

tricts," again referred to as "subdivisions of the State," the power, when authorized by a vote of qualified taxpaying electors, to incur debt, and issue bonds, and *required* the Police Juries to levy and impose each year the taxes necessary to retire these bonds. The proceeds of the bonds to be used in the building and improvement of public roads.

These articles of the Constitution were held by the Supreme Court of Louisiana to be self-executing, and that no legislation was required to carry them into effect, in the case of *Coguenhem v. Avoca Drainage District, 130 La. Rep., 323*, where the Court was called upon to construe Article 281 of the Constitution of 1898, as amended by the Constitutional Amendment of 1910. The Court held that no enabling act was needed to carry the Article into effect:

> "At the time the tax in question in this case was levied, the said amendment had already been adopted and gone into operation, and it, of itself, *in the absence of any legislative act, would clearly be sufficient to authorize said tax.* It reads plainly to that effect. Moreover, it expressly provides that it is to go into effect imediately, which can have no other meaning than that an enabling act is not to be necessary for it to go into effect." (Italics ours).

The Legislature did, however, adopt general statutes carrying these provisions of the Constitution into effect. These statutes authorized the creation of Road Districts by the Police Jury, and provided the machinery for the holding of elections to permit governing

authorities of such Districts to incur debt and issue bonds and *required* the levy and imposition of taxes to pay them.

Act 183 of 1914 and Act 30 of the Extra Session of 1917 authorized the creation of Road Districts, and Act 256 of 1910, as well as earlier acts, provided the machinery for the holding of the elections. It is particularly interesting to note the provisions of Section 1 of Act 256 of 1910, wherein it was specifically declared that:

> "Parishes, wards, cities, towns, villages, school districts, *road districts*, drainage districts and sub-drainage districts are *declared to be political sub-divisions of the State*, and special taxes may be levied, debt incurred and bonds issued therefor." (Italics ours).

In 1913 the Police Jury of the Parish of Bossier, in pursuance of these constitutional and statutory mandates, created Road District No. 1 of that parish. Under authority of a vote of property taxpayers, a debt of $175,000.00 was incurred by the Police Jury, and taxes were imposed annually for their payment. (Record, page 49).

In 1915, the Police Jury of the Parish of Bossier likewise created Road Districts Nos. 2 and 3, and debts in the sum of $50,000.00 each were incurred on behalf of each of those Districts, and taxes were imposed for their payment. (Record, page 49).

These Districts comprise the western portion of the Parish of Bossier. The railroad belonging to the

plaintiff in error runs through the heart of what was Road District No. 3 and across the northern portion of Road District No. 1. (Map, Rec., p. 12). The taxes levied and imposed by those Districts were paid each year by the complainant up to and including the year 1925, when the Consolidated Road District of Bossier Parish was created.

In 1921, a new Constitution was adopted by the people of the State of Louisiana and it was specifically declared in that Constitution that "the Legislature may, by general law, authorize the Police Juries to create Road Districts and Sub-Road Districts composed of territory, either wholly within a parish or partly within two or more parishes * * * and may by general law and within the limitations and conditions herein contained, authorize Road Districts and Sub-Road Districts so created, through the Police Jury or Juries of the Parish or Parishes, as the governing authorities thereof, to incur debt and issue negotiable bonds for the purpose of" constructing public roads. (Paragraph [c], Section 14, Article XIV). This section and article went even further. Again it was written into the Constitution that when bonds were issued by Road Districts, the Police Jury, as the governing authority of the District, "shall impose and collect annually in excess of all other taxes, a tax sufficient to pay the interest annually, or semi-annually, and the principal falling due each year, or such amount as may be required for any sinking fund necessary to retire said bonds at maturity" (Paragraph [a], Section 14, Article XIV, Constitution of 1921).

At the Special Session of the Legislature called subsequent to the adoption of the Constitution of 1921,

the Legislature passed Act 118 of 1921, which authorized the formation and consolidation of Road and Sub-Road Districts, defined their powers and duties and authorized the issuance of bonds. This statute we will more fully discuss later. (Brief, p. 38 to 39). At this time, it is merely necessary to state that it authorized the creation of Road and Sub-Road Districts by the Police Juries of the State, as well as the consolidation of existing Road Districts; provided for notice and hearing as to their creation, and authorized these Road Districts, Sub-Road Districts or Consolidated Road Districts to call elections and submit to the property taxpayers, propositions to incur debt and issue negotiable bonds. When these bonds had been issued, it was declared to be the duty of the governing authorities to impose and collect annually a tax on all the property subject to taxation by the subdivision under the Constitution and laws of Louisiana for their payment.

At the same session of the Legislature there was adopted Act 46 of 1921, which provided the machinery for the holding of elections of qualified property taxpayers in these Road Districts. Section 1 of this statute referred to Road Districts "as sub-divisions of the State," and authorized them to incur debt and issue negotiable bonds when authorized by the vote of a majority of qualified taxpayers in number and amount.

In pursuance of the authority contained in this Constitution and these statutes, in September of 1925, the Police Jury of Bossier Parish gave notice by publication for a period of ten (10) days of its intention to

consolidate the then existing Road Districts Nos. 1, 2 and 3, along with other lands, into a Consolidated Road District, and called a special meeting for October 13, 1925, to consider the formation of the District, and to hear complaints. This notice was published for ten days in the official journal. On the date specified, the Police Jury did meet, and objections were urged to the boundaries of the District (it being claimed that more territory should be included in the District than originally specified. It was also claimed that the bond issue should be increased (Rec., pp. 50-51). As a result of these objections, the Police Jury adopted another ordinance, again declaring its intention to create a Consolidated Road District, defining its boundaries, in accordance with the wishes of the taxpayers, and announcing its intention to meet on November 10, 1925, for the purpose of hearing objections and creating the District. (Rec., p. 51). This notice was published for ten days, and on November 10, 1925, the Police Jury again met, and as no objections were urged to the creation of the District, an ordinance was adopted ordering the consolidation of the Road Districts and creating the Consolidated Road District here under attack. (Rec., p. 52).

Thereafter, the Police Jury, as the governing authority of the District, called an election of the property taxpayers in the manner provided by the Constitution and laws of Louisiana; notice of this election was published in the official journal of the parish for a period of at least thirty days, and at this election, the property taxpayers qualified to vote authorized the incurring of a debt in the sum of $1,630,000.00 and the imposition of the tax, the payment of which is

herein enjoined. (Rec., p. 53). The result of this election was duly promulgated by the Police Jury, the proceedings of its meeting and the promulgation of the election being published in the official journal of the parish for one issue, as required by law. (Rec., p. 53).

Thereafter, the Police Jury placed the liquidated bonds to cover the outstanding bond issues of Road Districts Nos. 1, 2 and 3 in the State Treasury. It then advertised for sealed bids for the remaining bonds, received sealed bids for the sale thereof, and on March 27, 1926, subsequent to sixty days from the date of the promulgation of the result of the election, finally confirmed the sale of the bonds to the bond purchasers. (Rec., p. 54). Delivery was made, the proceeds of their sale were placed in the Treasury of the District, and at the time this suit was instituted, the money was being expended upon the construction of a system of hard-surfaced roads in the District. This work was being done in co-operation with the State Highway Commission of the State, assisted by the Federal Government. (Rec., p. 55. Map, Ex. S, Rec., p. 57). The Police Jury also levied the annual tax for the year 1926, of seven mills to meet the payments of principal and interest next due upon the bonds.

From this statement it will be seen that under the Constitution and statutes of Louisiana, a Road District is a "sub-division" of the State. In this respect, it is classed in the constitutional provisions referred to, along with municipalities and parishes. It is created under constitutional authority. Its bonds are its direct, unconditional obligations, which are to be paid from the annual levy of unlimited *ad valorem*

taxes, levied and imposed upon all of the property, real and personal, in the District, under direct constitutional mandate (the police jury being *required*, not merely authorized, to impose the tax) based upon the assesed valuation fixed for the levy of State taxes, and without any reference to benefits conferred by or arising from the construction of the roads. In other words, this is a general tax, not a local contribution or assessment.

That the Constitutions and statutes of Louisiana contemplate that an *ad valorem* tax of this character is a general tax and not a local assessment, is conclusively established when you consider the decisions of the Supreme Court of Louisiana construing provisions of a similar nature contained in the former Constitutions and statutes of that State.

As early as 1891, our Court was called upon, in the case of *Munson v. Board of Commisisoners of Atchafalaya Basin Levee District, 43 La. An., 15, 29,* to pass upon this question in construing that article (214) of the Louisiana Constitution of 1879, which authorized the Legislature to create Levee Districts and empowered the Commissioners to impose *ad valorem* taxes not to exceed ten mills on the dollar "on the property" in the Districts. It was claimed that this tax was in the nature of a special assessment levied "on the basis of benefits," and not a general tax levied on all property "for governmental and administrative purposes." The Court held that it was a general tax, saying:

> "While it is true that the tax specified in the article and amendment is only to be

laid 'on property situated within the alluvial portion of the district subject to overflow,' and is to be levied for the specific purpose of 'constructing, preserving and repairing the levees protecting the land of a district,' it is but a *'tax' for the local purposes of that district* of country, and is imposed on the persons therein domiciled, and the property therein situated, and upon all the subjects on which the State imposes a tax for State purposes. It is not a 'local assessment' for the construction of a particular work, and intended to be levied upon particularized property to be benefited thereby. *It is in the nature of a burden, and does not proceed upon the theory of benefit to the property to be assessed.*" (Italics ours).

Again, in the case of *Louisiana & N. W. R. Co. v. State Board of Appraisers, 126 La. Rep., pages 471, 472*, the Court had under consideration the validity of an *ad valorem* tax levied for school purposes under Article 232 of the Constitution of 1913. This article authorized parishes, municipal corporations, wards or school districts to levy special *ad valorem* taxes when authorized by vote of the property taxpayers, the avails to be used for the purpose of constructing public buildings, public school houses, bridges, wharves, levees, sewerage and other works of permanent public improvement. This tax was of a character similar to the one authorized by Article 281 of the same Constitution and Section 14 of Article XIV of the present Constitution. It was contended that such a tax levied by a school district was a special assessment or local bene-

fit tax. The Supreme Court of the State held the contrary, saying:

> "The tax is shown to be an *ordinary tax* by the very fact itself of express authority having been given for its levy. The Constitution has left the power of taxation unlimited and untrammeled in that phase of it by which special assessments are levied. This is established by an abundant and firmly settled jurisprudence. Had this tax, therefore, been a special assessment, no express authority for its levy would have been needed, and none would have been given. The framers of the Constitution would not have done the foolish thing of giving express authority to the Legislature to do a thing which the Legislature would have had the perfect right to do without such authority.
>
> * * * * *
>
> "Plainly the proviso which authorizes this tax simply extends in favor of schools the limit imposed by the article upon *ordinary taxation, and has reference to the same kind of taxation and the tax it authorizes is an ordinary tax.*"

In a later case, that of *Louisiana Ry. & Nav. Co. v. Madere, Sheriff, 124 La. Rep., 635, 638, 639, 640,* the Court affirmed the above decisions in another Levee Board case. In the Madere opinion, it was said:

> "Article 214 of the Constitution of 1879 authorized levee commissions to levy a tax

not to exceed 5 mills on the taxable property situated within the alluvial portions of levee districts subject to overflow. By amendment adopted in 1888 (Laws 1888, p. 8, No. 8), the limit was raised to 10 mills, and it was further provided that the rate of taxation might be increased by a vote of the property taxpayers of the district paying taxes for himself or others.

"By Act No. 95, p. 99, of 1890, creating the Pontchartrain Levee District, its board of commissioners was empowered to levy annually all district levee taxes authorized by article 214 of 1879 as amended, and it was made the duty of the assessor to extend said tax on the tax rolls, and the duty of the tax collector to collect said tax in the same manner that state taxes are collected, and to settle therefor with the auditor and State Treasurer.

"The same act authorized the board of commissioners to levy a 'special assessment or forced contribution' on certain lands, sugar, molasses, rice, cotton, and on railroads at the rate of $100 per mile of main line within the district.

"In this act the lawmaker makes a clear distinction between *district levee taxes*, to be levied and collected on property generally in the same manner as state taxes, and special assessments or forced contributions to be levied on particular property considered

to be specially benefited by the maintenance of the levee system.

"This distinction has been recognized and enforced by the Supreme Court of the state in a number of cases.

* * * * *

"This decision placed *levee taxes squarely on the plane of other general taxes authorized by the Constitution of 1879.* The same court had already, in Charnock v. Levee Company, 38 La. An. 325, drawn the distinction between the levee tax and the levee special assessment, and had held that the former was 'ordinary local taxation, levied in particular districts, it is true, but levied on all taxable property within such districts without reference to special benefit to particular property,' and that the provisions of the Constitution of 1879 had no application to 'that kind of taxation that falls under the denomination of strict local assessments, which are not levied on taxable property generally for the common public interest, but upon particular property specially benefited as an equivalent for the benefit conferred.'

"In the well-considered cases of Munson and Others v. Board of Commissioners, 43 La. An., 15, 8 South, 906, all the authorities were reviewed, and the court held that the *ad valorem* levee tax was a 'tax' for the local purposes of the district, and was not a 'local assessment' intended to be levied upon 'particularized property to be benefited thereby.'

> "The same distinction between a tax for local purposes and a local assessment was announced in Construction Co. v. Tax Collector, 108 La., 435, 32 South, 399, 58 L. R. A. 349, and in Louisiana & Northwestern Railroad v. State Board of Appraisers, 120 La. 471, 45 South, 394.
>
> "The *settled jurisprudence* of this state on this subject renders it unnecessary for the court to consider the numerous authorities from other jurisdictions cited in the very able brief filed by counsel for the defendant."

The general nature of these taxes and their character are further borne out by the mode and method of their assessment and collection. In these respects they are on a parity with State and parish taxes.

In order to insure the assessment and collection of these general taxes levied by the Police Juries on behalf of the Road Districts, the Legislature has expressly provided that such taxes "shall be levied and collected, by the same officers, at the same time and in the same manner as the general taxes of the subdivision" (Sec. 35, Act 46 of 1921), and, as a further assurance, the Constitution authorized the Legislature to vest the taxing officers of the State and parish with the power to impose and collect such taxes in default of their imposition by the Police Jury (Paragraph j, Sec. 14, Art. XIV, Const. 1921), which power the Legislature conferred on these officers under the provisions of Act 46 of 1921, Section 35.

The mode and method of assessing and collecting all of the *ad valorem* taxes levied and assessed in Louisiana is as follows:

The Assessor of the Parish makes up his assessment rolls each year, listing thereon all property subject to taxation and fixing the valuation thereof for the purposes of such taxation. The tax levied by the Police Jury as the governing authority of a Road District is then extended upon these rolls, in the same manner as are the taxes of State and parish, and for school and other general purposes. All are based upon the assessed valuation appearing upon the assessment rolls. (Rec., p. 64). This roll is then delivered to the Sheriff of the parish and the Sheriff collects all of the taxes, the taxpayer being required to pay all taxes levied and imposed upon his property at the same time, whether such taxes are State, parish, road, school, or other general taxes. (Rec., p. 66).

Thus it will be seen that under the Constitution and laws of the State of Louisiana prevailing since 1898, not only has the building of roads in the State been recognized as a matter of prime public importance, in the same category as the construction of schools, but Road Districts have been created by Police Juries under this direct constitutional authority or constitutional mandate and these Road Districts have been placed in the same category with parishes and municipalities and have been declared "sub-divisions" of the State.

The public roads in these districts have been constructed by the Police Juries of the parishes in which the district are located, the cost of construction being

defrayed from the proceeds of bond issues, issued and sold under authority of a vote of qualified taxpaying electors, and not from the imposition of special assessments against specially benefited land. The Police Juries are then required to levy ordinary *ad valorem* taxes on all property in the District, based on assessed value, and regardless of benefits, the avails of which are used to pay the principal and interest of the bonds thus issued and sold. The burden of these taxes being spread equally over all of the property in the District.

Then from a consideration of the Constitution and statutes of Louisiana it will be seen that full legislative power and authority is conferred upon Police Juries by the Constitution and those statutes in the matter of the creation of Road Districts and the imposition of taxes by such Districts; that such taxes are a burden imposed equally upon all property in the District, and are general in their nature and in no sense special. Then, under these circumstances, we submit that the determination of all questions by the Police Jury of Bossier Parish were conclusive and final and that no taxpayer was entitled to notice or hearing prior to action by that body. That the above proposition is correct is established by numerous decisions of this Court.

That where the Legislature has established the bounds of a district for the purpose of determining what property shall be subject to taxation, to defray the cost of public improvement, this legislative determination is binding, and that due process of law does not require that the taxpayer shall be afforded a hearing, has been many times squarely decided by this Court, one of the latest cases being that of *Valley*

Farms Co. v. Westchester County, 261 U. S., 155-164; 67 L. Ed., 585-590. In that case, in passing upon the validity of the creation of a sewer district by the Legislature of the State of New York, it was said:

> "It was unnecessary for the Legislature to give notice and grant hearings to owners before fixing the boundaries of the district so as to include their lands, and prescribing the method of taxation."

Another late expression of this Court on the question is found in the case of *Hancock v. Muskogee, 250 U. S., 454, 457; 63 L. Ed., 1081-1083.* There it was claimed that the levy of an assessment, under an Oklahoma statute, to cover cost of construction of a sewer, violated the Fourteenth Amendment, as no hearing was provided. This Court said:

> "So far, therefore, as the present ordinance determined that a district sewer should be constructed, and established the bounds of the district for the purpose of determining what property should be subjected to the special cost of constructing it, there was an authorized exercise of the legislative power of the state, which, according to repeated decisions of this court, was not wanting in due process of law because of the mere fact that there was no previous notice to the property owners or opportunity to be heard. The question of distributing or apportioning the burden of the cost among the particular property owners is another matter. Spencer v. Merchant, 125 U. S., 345, 355-357, 31 L.

Ed., 763, 767, 768, 8 Sup. Ct. Rep., 921; Paulsen v. Portland, 149 U. S., 30, 40, 37 L. Ed., 637, 641, 13 Sup. Ct. Rep., 750; French v. Barber Asphalt Paving Co., 181 U. S., 324, 343, 45 L. Ed., 879, 889, 21 Sup. Ct. Rep., 625; Shumate v. Heman, 181 U. S., 402, 45 L. Ed., 922, 21 Sup. Ct. Rep., 642, affirming Heman v. Allen, 156 Mo., 534, 57 S. W., 559; Phillip Wagner v. Leser, 239 U. S., 207, 218, 60 L. Ed., 230, 236, 36 Sup. Ct. Rep., 66; Withnell v. Ruecking Constr. Co., 249 U. S., 63, *ante*, 479, 39 Sup. Ct. Rep., 200."

It may, however, be contended that the action in this case at bar was not taken by the Legislature, but by the Police Jury acting as the governing authority of a Road District and that, therefore, as this Board determined the question, a hearing should have been afforded.

It is equally well settled by decisions of this Court that where the Constitution or the Legislature has delegated full power to a municipal board to determine questions of this character, the decision of that Board has the effect of a legislative determination.

In the case of *Withnell v. Ruecking Constr. Co., 249 U. S., 63, 69, 63 L. Ed., 479, 482*, this Court was called upon to consider the action of the Municipal Council of the City of St. Louis, assessing the cost of paving upon the abutting property. The Charter of the City of St. Louis was framed under express authority of the people, conferred upon them under the Constitution. It was claimed that the complainant had

not been afforded an opporunity to be heard, in that the Charter provided for no notice or hearing. The Court, in answering the contention, said:

> "But whether a property owner is entitled to be heard in advance upon the questions of benefit and apportionment depends upon the authority under which the assessment is made. When the assessment is made in accordance with a fixed rule adopted by a legislative act, a property owner is not entitled to be heard in advance on the question of the amount and extent of the assessment and the benefits conferred. French v. Barber Asphalt Paving Co., 181 U. S., 324, 45 L. Ed., 879, 21 Sup. Ct. Rep., 625; Embree v. Kansas City & L. B. Road Dist., 240 U. S., 242, 60 L. Ed., 624, 36 Sup. Ct., 317; Phillip Wagner v. Leser, 239 U. S., 207, 217, 218, 60 L. Ed., 230, 236, 237, 36 Sup. Ct. Rep., 66, and cases cited. We are of opinion that the assessment made in accordance with the rule of the St. Louis charter was legislative in character and required no previous notice or preliminary hearing as to the nature and extent of benefits in order to maintain its constitutional validity. The charter of the City of St. Louis was adopted by a vote of the people under state constitutional authority."
>
> * * * * *
>
> "We reach the conclusion that the attack upon the validity of the assessment for want of advance notice of hearing as to benefits must fail."

This case was affirmed in *Hancock v. Muskogee, supra,* where similar contention was made, and it was answered by the Court in the following language:

> "The chief reliance of plaintiff in error is upon those decisions which have held that where the legislature, instead of determining for itself what lands shall be included in a district, or what lands will be benefited by the construction of a sewer, submits the question to some board or other inferior tribunal with administrative or quasi-judicial authority, the inquiry becomes in its nature judicial in such a sense that property owners are entitled to a hearing or an opportunity to be heard before their lands are included. Fallbrook Irrig. Dist. v. Bradley, 164 U. S., 112, 166, 167, 174, 175, 41 L. Ed., 369, 391, 392, 394, 17 Sup. Ct. Rep., 56; Parsons v. District of Columbia, 170 U. S., 45, 52, 42 L. Ed., 943, 946, 18 Sup. Ct. Rep., 521; Embree v. Kansas City & L. B. Road Dist., 240 U. S., 242, 247, 60 L. Ed., 624, 627, 36 Sup. Ct. Rep., 317. But they have no application to a case where, as in the case before us, full *legislative power over the subject-matter has been conferred by the state upon a municipal corporation.* Where that has been done, a legislative determination by the local legislative body is of the same effect as though made by the general legislature. Withnell v. Ruecking Constr. Co., 249 U. S., 63, 70, *ante,* 479, 483, 39 Sup. Ct. Rep., 200." (Italics ours).

We have shown from the history of the constitutional and statutory legislation had in Louisiana on this particular subject that both in the Constitution and by legislative act, Police Juries are vested with power in connection with the creation of road districts and they are likewise granted full power to incur debt and issue bonds under certain specific conditions outlined in the Constitution and in these Statutes.

Then we submit that under the authorities above cited the Police Juries have been fully vested under the Constitution and Statutes with full power in the matter of the creation of Road Districts and that their determination of the question has the effect of a legislative determination; that no hearing is required prior to the creation of the District, and that the ruling of the Court of Appeals of the Fifth Circuit, in the *Wight* case was eminently correct, and that when that Court said:

> "Doubtless the laws could provide for road districts, in which improvements would be made for the benefit of specific property and the improvement met by assessments against such property. *The Constitution and statutes of Louisiana, however, make no provision for such improvement districts.* The Districts under consideration are not of this character. They are special taxing districts for the general good. They enable the construction of good roads from which every person in the state may be expected to receive some direct or indirect benefit. To undertake to apply to such government activities the rules which are invoked with regard to drain-

> age, irrigation, or other improvement districts of that character would be to entirely destroy the possibility of efficient governmental action," (Rec., p. 86)

it properly construed the Constitution and Statutes of Louisiana and properly announced the rule which has been established and recognized by repeated decisions of this Court. That the ruling of the Judges of the Court of Appeals is correct, and that the principle of that case is sound, we further respectfully submit, has been recognized by this Court, for, in the *Archer County* case, *Browning v. Hooper, 269 U. S., 396, page 70, L. Ed., page 330*, this Honorable Court broadly stated the rule announced in the *Wight* case, and cited that case approvingly to sustain the proposition:

> "Where a local improvement territory is selected, and the burden is spread by the legislature or by a municipality to which the State has granted full legislative powers over the subject, the owners of property in the district have no constitutional right to be heard on the question of benefits. Valley Farms Co. v. Westchester, *supra;* Hancock v. Muskogee, 250 U. S. 454, 459, 63 L. Ed. 1081, 1084, 39 Sup. Ct. Rep. 528; Withnell v. Ruecking Constr. Co., 249 U. S. 63, 69; 63 L. Ed. 479, 483, 39 Sup. Ct. Rep. 200; *Wight v. Avoyelles* (C. C. A. 5th) 264 Fed. 705."

Thus it will be seen that your Honors cite as authority for the rule of law announced, in addition to the cases decided by this Court, the decision of the Court of Appeals for the Fifth Circuit, upon which we rely.

This is the only decision of any Court of Appeals cited in support of this proposition of law.

We respectfully submit that the ruling in the *Wight* case is in strict accord with the decisions of this Court; that the ruling in that case has been approved by this Court; and that therefore, when the District Court applied the rule announced in the *Wight* case and held that the plaintiff was entitled to no hearing before the Police Jury of the Parish of Bossier, it properly applied the law and, to quote the words of this Court used in the case of *Campbell v. Olney, 262 U. S., 352-354*, "his claim that he was denied due process of law is not even colorable."

Counsel, however, contends that the decision of this Court in the *Archer County* case controls the case at bar, and that in that opinion, a contrary rule of law was announced to that laid down by the Court of Appeals for the Fifth Circuit in the *Wight* case. This contention was given very careful consideration by the Judges of the District Court, and those Judges so clearly pointed out the distinguishing features between the two cases that we deem it necessary to do no more than quote this portion of the opinion of the District Court:

> "It is urged by complainant that the recent decision of the Supreme Court of the United States in the Archer County case, ... v. ....., ...U. S.....,, is contrary to this ruling of the Court of Appeals. However, the two cases are easily distinguishable. In the Archer County case the power to initiate proceedings

for the levying of the road tax therein involved, was vested in a few taxpayers, who, in their petition were given the right to define the district, fix the amount, maturity of the tax, etc., and when submitted to the County Commissioners the latter had no option but to order an election. If carried by vote of the property taxpayers entitled to vote, then the bonds were issued and the tax levied accordingly. The Court simply held that this was in effect the abdication of its authority by the Legislature and the vesting of unlimited power in the petitioning taxpayers without opportunity to nonconsenting and nonvoting taxpayers to be heard. The proceeding was in no wise similar to the one here. It is settled, in fact conceded, that the Legislature itself might impose the tax without hearing on the part of anyone, and we think it equally true that it may vest that power in one of its municipal subdivisions like the police jury or governing body of a parish. Under the Constitution and laws of Louisiana the police jury is made the governing authority for road districts and the duties of defining the district, fixing the amount and duration, interest, etc., of the bond issue as well as the levying of a tax to pay the same, is intrusted to it. The fact that it must have the approval of the property taxpayers does not, in our opinion, affect its governmental status as a subdivision of the state. In the present case we think the police jury complied with all of the requirements of the Constitu-

tion and laws of the State, and in view of the nature of the proceeding it is not subject to the objection urged in the Archer County case." (R., p. 87).

SECOND.

The State Statute Provides For, and the Police Jury in Fact Allowed a Hearing Prior to the Final Imposition of the Tax.

Should your Honors conclude that notice and a hearing was required at some stage of the proceedings leading up to the formation of this District, the incurring of the debt and the levying of the tax, then we respectfully submit that the Constitution and Statutes of the State of Louisiana have provided for notice and hearing, and that in fact an opportunity to be heard was afforded the plaintiff in error, of which it failed to take advantage, and it is therefore now precluded from seeking to question the constitutionality or legality of the creation of the District, the issuance of the bonds or the levy and imposition of the tax.

Before arguing this proposition we crave your Honors' indulgence and permission to again refer somewhat to the Constitution and Statutes of the State of Louisiana. We have heretofore pointed out that under the Constitution of Louisiana the Legislature may, by general statute, confer upon the Police Juries of the parishes, the power to create road districts, and that those Police Juries as the governing authorities of the districts may incur debt and issue bonds, when properly authorized, for the purpose of constructing highways.

We also have heretofore called your Honors' attention to Act 118 of 1921, wherein the Legislature specifically authorized Police Juries to create Road Districts and Sub-road Districts, and provided the method of creation. As this statute is very important in the consideration of the issues herein presented, we will refer to it somewhat in detail.

Section 2 of this statute authorizes the Police Jury to create Road Districts on their own initiative after notice of intention to create the district has been ordered by resolution and the notice containing the proposed boundaries has been published once a week for four successive weeks.

Section 3 provides that a day shall be fixed on which the Police Jury shall hear objections and pass upon same, make changes in the boundaries and finally create the district, in which event notice of formation of the District shall be published in a newspaper in the parish.

Section 10 provides that where Road Districts theretofore had been created in the parish, that the Police Jury may consolidate all of such road districts and include in consolidated district other portions of the parish. These districts are known as Consolidated Road Districts.

These Consolidated Road Districts are created under the provisions of Section 11 of the statute, which provides that the Police Jury shall pass an ordinance specifying the existing road districts, the respective indebtedness of each, shall state that it was advisable to consolidate them, and make an estimate of the

amount of new money needed to enlarge the road system. This ordinance "shall be published once in the official journal of the parish." The Police Jury shall then, in not less than ten (10) days after publication of the ordinance, call an election, which shall "be called, proclaimed, held and promulgated in all particulars as near as may be in the manner prescribed by the general laws in relation to incurring debt and issuing bonds," at which election the qualified taxpaying electors shall vote on the question of the incurring of the debt. If a majority in number and amount of the qualified property taxpayers vote in favor thereof, the Police Jury shall promulgate and publish the result of the election and shall adopt two ordinances, to be published in the official journal, the first declaring the consolidated road district to have been created and the second providing for the issuance of consolidated road district bonds.

This statute we claim provides for notice by and a hearing before the Police Jury prior to the creation of the District. Plaintiff in error contends that it affords no hearing in so far as concerns the Consolidated Road Districts, but only in case of the creation of a Road District in the first instance. Taking the statute as a whole, it clearly contemplates notice and a hearing in both instances, but if there were any doubt as to its meaning, that doubt must be resolved in favor of the interpretation contended for by defendant, when you consider the manner in which the Supreme Court of Louisiana has interpreted this statute in the case of *Hardin v. Police Jury of the Parish of Vernon, 155 La. Rep., 899.* In that case the Louisiana Supreme Court had before it an action wherein a taxpayer was

seeking to attack the proceedings of the Police Jury of Vernon Parish creating a Consolidated Road District, the issuance of bonds and the levying of a tax. The Court discussed fully the statute of 1921 (Act 118), and said:

> "It will be noticed that in the creation and formation of road districts, *consolidated or otherwise*, the final authority is vested in the police jury, *subject to the requirement of notice and hearing of those in interest who may wish to complain. This, no doubt, was intended to afford, to any one who might desire, a chance by any legitimate means, to induce the jury to change or modify its purpose to such extent as might be determined—in other words, for the bringing into play of such arguments and the force of public opinion as might be available, as a wholesome influence upon the otherwise unlimited discretion of the police jury.* But, can it be said, in the light of the concluding declaration of the statute, that it should be liberally construed to promote such undertaking, that it was intended to make those requirements conditions precedent to the existence of a district and that a failure to do so should nullify the whole proceeding even after the matter has been submitted to and approved by a majority of the property taxpayers, and notwithstanding the period of repose, provided by the Constitution and Act 46 of the same year, has run? We think not." (Italics ours).

Thus it will be noted that our Court has expressly provided that the exercise of the authority vested in the Police Jury is "subject to the requirement of notice and hearing of those in interest who may wish to complain," then clearly the Court considered that notice and hearing are contemplated by the statute. Now it is a rule that the construction given a State statute by the State Court becomes a part of the statute as fully as though it were written therein:

> "The Supreme Court of the State, having said that the two statutes must be taken together in determining the penalty intended, we must accept that conclusion as if written in the statutes themselves * * * all that would be open in this Court, under the due process clause, is whether the State had power to impose the penalty fixed by the statutes as thus construed."
>
> *Hebert v. State of Louisiana, 272 U. S., 312, 71 L. Ed., 270.*

Then, under this statute, we submit that a hearing was afforded the plaintiff in error. The fact that it failed to avail itself of the opportunity and to appear before the Board was due to its own negligence. In any event it was afforded due process of law.

Counsel for plaintiff in error, however, attack the ruling of the Supreme Court of Louisiana in the *Hardin* case. Counsel claim in their brief (page 44) that the language of the Supreme Court was mere *dicta* and that the Court was not called upon to decide that question. This contention is fully answered by calling your Honors' attention to the statement of the issues

presented in that case as made by Judge Dawkins, then Judge of the Supreme Court of Louisiana. He pointed out that the attack was leveled at the creation of the district, as well as to the legality of the bonds and the tax. He specifically stated that it was alleged that "in creating the district, the Police Jury did not

1st. Give notice of intention to create;

2nd. Publish the ordinance creating the district for 10 days;

3rd. Wait 10 days after publication before calling the election."

Thus it will be seen that these very questions were presented.

Furthermore, in the case at bar, the facts are that the Police Jury published notice not once, but twice, and held two hearings prior to the organization of this Consolidated Road District. (R., pp. 50-52). Thus it too construed the statute in the same manner as did the Supreme Court of the State.

Notwithstanding this construction and the fact of notice and hearing, the counsel claim plaintiff in error was entitled to a direct and unequivocal statutory declaration of notice and hearing, and that anything else is a matter of grace and not due process of law. Is not this contention answered by the decision of this Court in the *Kentucky Tax Cases, Cincinnati, N. O. & T. P. R. R. Co. v. Kentucky, 115 U. S., 321, 324, 29 L. Ed., 414, 418?* In that case this Court was called upon to construe a Kentucky statute governing

the assessment of railroad property. In construing this statute the Kentucky Court of Appeals had said:

> "As we construe this Act, although in the nature of an original assessment, the parties had the right to be heard and were in fact heard before the board passing upon the question of valuation."

In its opinion this Court stated:

> "It is said, however, in answer to this, by counsel for plaintiffs in error, in argument, that whatever was in fact this alleged hearing, it could only have been accorded as a matter of grace and favor, because it was not demandable, as of right, under the law; and consequently has no such legal value as attaches to a hearing to which the law gives a right, and to which it compels the attention of the officer, under an imperative obligation, with the sense of official responsibility for impartial and right decision which is imputed to the discharge of official duty.
>
> "But such is not the *construction put upon the statute, as we have seen, by the Court of Appeals of the State, nor the practical construction*, as we infer from the averments of the pleadings, put upon it by the officers called to act under it. And if the plaintiffs in error have the constitutional right to such hearing, for which they contend, the statute is properly to be construed so as to recognize and respect it, and not to deny it. The Constitution and the statute will be construed

> together as one law. This was the principle of construction applied by this court, following the decisions of the state court, in Neal v. Delaware, 103 U. S. 370 (Bk. 26, L. Ed. 567), where words, denying the right, were regarded as stricken out of the State Constitution and statutes, by the controlling language of the Constitution of the United States; and in the case of Cooper v. The Wandsworth Board of Works, 14 C. B. N. S. 180, 194, in a case where a hearing was deemed essential, it was said by Willes, J., 'that, although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the Legislature.'" (Italics ours).

Even if it be conceded *arguendo* that the statute provided for no notice and hearing before the Police Jury prior to the creation of the Consolidated District, and that plaintiff in error was in fact deprived of both notice of the contemplated action of the Police Jury and of a hearing before that body, still we submit that under other provisions of the Constitution and statutes of the State of Louisiana, the plaintiff in error was allowed a reasonable time within which *to resort to the Courts* to urge objection to the creation of the Consolidated District and the imposition of the tax. This, in itself, constituted due process of law.

In this connection it should be remembered that the claim of plaintiff in error is that the action of the Police Jury of Bossier Parish deprives it of its property without due process of law. Then the sole ques-

tion for consideration is, has plaintiff in error enjoyed due process of law? If it has, then the demand as to this branch of the case must be dismissed. Counsel for plaintiff in error seem to assume that due process of law means that the hearing must have been allowed prior to the creation of the District, but we submit that such is not the rule of law. The rule, as announced by this Court, is that due process of law in matters of the character under consideration in this case means that the party complaining shall have had an opportunity *at some stage of the proceedings, prior to the time that the tax, which is sought to be imposed, becomes final, to be heard as to the legality of that tax.*

This was squarely decided in *Davidson v. New Orleans, 96 U. S., 97, 104, 24 L. Ed., 616, 619.* In that case the validity of a local assessment made by the City Council of New Orleans, was attacked on the ground that it deprived plaintiff of his property without due process of law. The Court laid down the following broad proposition of law as applicable to the case:

> "That whenever by the laws of a State, or by state authority, a tax, assessment, servitude or other burden is imposed upon property for the public use, whether it be of the whole State or of some more limited portion of the community, and those laws provide *for a mode* of confirming *or contesting* the charge thus imposed, *in the ordinary courts of justice*, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to

deprive the owner of his property without due process of law, however obnoxious it may be to other objections." (Italics ours).

Again in *Londener v. Denver, 210 U. S., 373, 385, 52 Law Ed., 1103, 1112,* this general rule was once more affirmed:

"In the assessment, apportionment, and collection of taxes upon property within their jurisdiction, the Constitution of the United States imposes few restrictions upon the states. In the enforcement of such restrictions as the constitution does impose, this court has regarded substance, and not form. But where the legislature of a state, instead of fixing the tax itself, commits to some subordinate body the duty of determining whether, in what amount, and upon whom it shall be levied, and of making its assessment and apportionment, due process of law requires that, at some stage of the proceedings, before the tax becomes irrevocably fixed, the taxpayer shall have an opportunity to be heard, of which he must have notice, either personal, by publication or by a law fixing the time and place of the hearing. Hagar v. Reclamation Dist. No. 108, 111 U. S. 701, 28 L. Ed. 569, 4 Sup. Ct. Rep. 663; Kentucky R. Tax Cases, 115 U. S. 321, 29 L. Ed. 414, 6 Sup. Ct. Rep. 57; Winona & St. P. Land Co. v. Minnesota, 159 U. S. 526, 537, 40 L. Ed. 247, 251, 16 Sup. Ct. Rep. 83; Lent v. Tillson, 140 U. S. 316, 35 L. Ed. 419, 11 Sup. Ct. Rep. 825; Glidden v. Harrington, 189 U. S. 255,

47 L. Ed. 798, 23 Sup. Ct. Rep. 574; Hibben v. Smith, 191 U. S. 310, 48 L. Ed. 195, 24 Sup. Ct. Rep. 88; Security Trust & S. V. Co. v. Lexington, 203 U. S. 323, 51 L. Ed. 204, 27 Sup. Ct. Rep. 87; Central R. Co. v. Wright, 207 U. S. 127, *ante*, 134, 28 Sup. Ct. Rep. 47."

Counsel for plaintiff in error seem to assume the position that the Constitution of the United States requires a hearing before the Police Jury, and that a hearing before a Court is not sufficient. In this counsel clearly are in error, for it has been repeatedly decided by this Court that an opportunity to be heard in the Courts is sufficient and constitutes due process of law.

One of the leading cases on this question is that of *Hagar v. Reclamation Dist. No. 108, 111 U. S., 701, 708, 28 L. Ed., 569, 572.* In this case an act of the Legislature of California was called in question which provided for the reclaiming of swamp and overflowed marsh lands. The legality of an assessment levied under this statute was attacked on the ground that the complainant had not been afforded a hearing. The Court said:

> "The appellant contends that this fundamental principle was violated in the assessment of his property, inasmuch as it was made without notice to him or without his being afforded any opportunity to be heard respecting it, the law authorizing it containing no provision for such notice or hearing. His contention is that notice and opportunity to be heard are essential to render any proceedings due process of law which may lead

to the deprivation of life, liberty or property. Undoubtedly, where life and liberty are involved, due process requires that there be a regular course of judicial proceedings, which imply that the party to be affected shall have notice and an opportunity to be heard; so, also, where title or possession of property is involved. But where the taking of property is in the enforcement of a tax, the proceeding is necessarily *less formal*, and whether notice to him is at all necessary may depend upon the character of the tax and the manner in which the amount is determinable. The necessity of revenue for the support of the government does not admit of the delay attendant upon proceedings in a court of justice, and they are not required for the enforcement of taxes or assessments.

* * * * * *

"In some states, *instead of a board of revision or equalization*, the assessment *may be revised by proceedings in the Courts and be there corrected if erroneous*, or set aside if invalid; or objections to the validity or amount of the assessment may be taken when the attempt is made to enforce it. *In such cases all the opportunity is given to the taxpayer to be heard respecting the assessment, which can be deemed essential to render the proceedings due process of law.* In Davidson v. New Orleans this Court decided this precise point. In that case, an assessment levied on certain real property in New Orleans for draining the swamps of that city

was resisted, on the ground that the proceeding deprived the owners of their property without due process of law; but the Court refused to interfere, for the reason that the owners of the property had notice of the assessment and an opportunity to contest it in the Courts. After stating that much misapprehension prevailed as to the meaning of the terms 'due process of law', and that it would be difficult to give a definition that would be at once perspicuous and satisfactory, the court, speaking by Mr. Justice Miller, said that it would lay down the following proposition as applicable to the case, 'That whenever by the laws of a State, or by state authority, a tax, assessment, servitude or other burden is imposed upon property for the public use, whether it be for the whole State or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections.'

"This decision covers the cases at bar. The assessment under consideration could, by the law of California, be enforced only by legal proceedings, and in them *any defense*

*going either to its validity or amount could be pleaded * * *."* (Italics ours).

In *Lent v. Tillson, 140 U. S., 316, 328, 35 L. Ed., 419, 425,* this question was also squarely passed upon. In that case the Court again construed a California statute which authorized the opening of a street and which expressly provided that notice of the assessment be published for not less than ten days in two daily newspapers, and that within thirty days after the last publication, the party aggrieved would have the right to protest the validity of the assessment by petition to the county court. In construing this statute the Court said:

> "And ample opportunity was given to all persons interested to *test in a court* of competent jurisdiction the fairness and legality of any assessment proposed to be made upon their property for the purposes indicated by the Statute. That court had power to require such alterations or modifications of the report of the board of commissioners as justice demanded. It was not bound to approve any report that did not conform to its judgment as to what was right; and without such confirmation the board could not proceed in the execution of the work contemplated by the Legislature."

Again, in the case of *Cincinnati, N. O. & T. P. R. R. Co. v. Kentucky, 115 U. S., 321, 325, 29 L. Ed., 414, 418 (supra)*, the Court, passing upon the question of due process, said:

> "But whatever relief courts of justice may afford against the injuries apprehended,

> when, in fact, they have resulted, is secured to the plaintiffs in error by the very statute of which they complain. For the valuation of railroad property, under that Act, and the assessment of the taxes thereon, are not final, in the sense that they constitute a charge upon the property subject to the tax, or a liability fixed upon the corporation owning it. That result can be attained, and the tax actually collected, only by suit, as provided in the fifth section of the statute, either against the officers of the companies for penalties incurred by a failure to pay the taxes levied, or for the recovery of the taxes themselves, by action in the Franklin Circuit Court, or in the courts having jurisdiction in the counties, for the taxes payable to them respectively. The case is thus brought directly and distinctly within the decision in Davidson v. New Orleans * * *."

It is our position in this case that the Constitution and Statutes of Louisiana grant to a party in interest ample opportunity to appear before the Court and contest the validity of any and all proceedings leading up to the creation of a District, the incurring of debt, the issuance of bonds, and the levying of taxes, prior to the final levy and imposition of the taxes; that these provisions of our law afford due process of law; and that in this case, plaintiff was afforded due process of law, and now has no right to complain.

It is written into the Constitution of Louisiana (1921) that when a Road or other taxing District is

created, and an election is held at which bonds are authorized to be issued and taxes levied to pay same, that

> "For a period of Sixty (60) days from the date of promulgation of the result of any election held under the provisions of this section, any person in interest shall have the right to contest the legality of such election, the bond issue provided for, or the tax authorized, *for any cause;* after which time no one shall have any cause or right of action to contest the regularity, formality, or legality of said election, tax provision, or bond authorization, for any cause whatsoever. If the validity of any election, special tax or bond issue authorized or provided for, held under the provisions of this section, is not raised within the sixty (60) days herein prescribed, the authority to issue the bonds, the legality thereof and of the taxes necessary to pay the same shall be conclusively presumed, and no court shall have authority to inquire into such matters."
>
> *Paragraph (n), Sec. 14, Art. XIV, Const. 1921.*

Section 43 of Act 46 of 1921, the act providing the machinery for the holding of elections, the issuance of bonds and the levying of taxes to pay same, also specifically provides:

> "For a period of sixty days from the date of the promulgation of the result of any election held under the provisions of this act, any person in interest shall have the right to

contest the legality thereof, the bond issue provided for, or the tax authorized *for any cause;* after which time, no one shall have any cause or right of action to contest the legality, formality or regularity of said election tax provision or bond authorization, for any cause whatsoever.

"If the validity of any election, special tax or bond issue authorized or provided for under the provisions of this act be not raised within the sixty days herein prescribed, the authority to issue the bonds, the regularity thereof, and of the taxes necessary to pay the same, shall be conclusively presumed, and no court shall have the authority to inquire into such matters."

Act 118 of 1921 (Sec. 11), in providing for the creation of Consolidated Road Districts and the holding of elections therein at which the qualified taxpaying electors vote to incur debt and issue bonds, requires that this

"election shall be called, proclaimed, held, and promulgated in all particulars as near as may be in the manner prescribed by the general laws in relation to incurring debt and issuing bonds * * *."

These statutes have been given thorough consideration by the Louisiana Supreme Court, and they have been, for all practical purposes, held to be statutes of repose or pre-emption, and it is now settled by repeated decisions of that Court that during the sixty-day period an action may be instituted by a party in

interest, but that subsequent to that period of time all actions are barred.

The leading case on this question in the State jurisprudence is that of *Roberts v. Evangeline Parish School Board, 155 La. Rep., 331.* In that case, the legality and constitutionality of the formation of a school district and bonds issued and taxes levied by it, were called in question. The sixty days' constitutional and statutory prescription was pleaded. The plea was sustained, the Court saying:

> "The Constitution therefore declares in plain terms that after 60 days the bonds and taxes shall be conclusively held to be valid, that no one shall have the right to question their validity, that no court shall have authority to entertain any controversy over their validity.
>
> "And it seems to us that language could not be used to express more strongly the very patent intention of the Constitutional Convention, to-wit, that after *60 days have elapsed without any attack upon a bond issue and tax voted by property tax payers under color of law, any person may safely purchase such bonds and feel secure that the taxes* levied to pay them will be sustained by the Courts of this State. *The constitutional convention had the right to say this; it did say it, and that is the end of the matter.*" (Italics ours).

In a later case, *Hardin v. Police Jury of Vernon Parish (supra, p. 39)*, the rule was applied in a case

where the legality of the creation of a Consolidated Road District was called in question. The Court in that case said:

> "From all of this, it will be seen that the apparent purpose was, after the expiration of sixty days from the promulgation of the result of such bond elections, *to remove from doubt the validity of all bonds authorized under this section of the Constitution and the laws carrying it into effect.* Of course, as heretofore pointed out in the case of ..... v. ..... there must be at least a color of right in the authority which conducts the proceedings for holding the election and issuing the bonds. Certainly there would be no such color of authority in the 'village barber' or other agencies, which, in extreme illustrations, have been suggested in other cases. *The police jury was the proper agency to create the district and to submit the question of issuing bonds and voting taxes to the taxpayers; it did create a district with well-defined limits and submitted the matter to those entitled to vote, and the latter, by considerable majority, approved the proposition and, in these circumstances, no one can be heard to complain of anything which would have the effect of impairing 'the legality of the election, the bond issue provided for, or the tax authorized for any cause,' but '* * * the authority to issue the bonds, the legality thereof, and the taxes necessary to pay the same' are 'conclusively presumed.'*

"Where the subdivision purporting to act has jurisdiction, and there is an apparent purpose to proceed under the provisions of the Constitution and laws putting it into effect, *no omission to comply with the literal terms of either can be urged to nullify the result after the running of the period of repose fixed by the Constitution itself.*

"Whatever may be said about there being a distinction, as to the prescriptive period, between proceedings for the creation of a district and those for holding the election therein after its creation for the issuance of bonds and voting taxes, the argument is met by the inexorable *fact that an attack upon either, after the lapsing of that time, amounts to an assault upon the bonds themselves, as well as the taxes for their payment, a thing which the organic law, in plain terms, says shall not be done.*" (Italics ours).

These decisions have been reaffirmed by the Supreme Court of Louisiana in the cases of

Brock v. Police Jury, 159 La. Rep., 66.
Fontenot v. Miller Gravity Drainage District, 159 La. Rep., 302.
Chiara v. Lafourche-Terrebonne Dr. Dist., 159 La. Rep., 422.
Henderson Land & Plant. Co. v. Police Jury, 159 La. Rep., 733.

It certainly cannot be successfully argued that the imposition of the tax becomes final prior to the expiration of the 60 days, for the language of the Con-

stitution and statutes is so very clear that it readily appears from the reading of those provisions that the effect of the levy is held in abeyance.

The construction given a similar statute of limitations, Act 256 of 1910 and Act 317 of 1910, by the Supreme Court of Louisiana in the case of *Coguenhem v. Avoca Drainage District, 130 La., 323, 330,* settles any question as to whether the levy does remain in abeyance. In that case the Court, in referring to the 60-day prescription appearing in those statutes, said:

> "As an effect of this provision, the levy remains in abeyance or suspense for 60 days after notice by publication, in order to afford the tax owner an opportunity to be heard. This, we think, clearly satisfies the requirement of due process of law. Lent v. Tillson, 140 U. S., 316, 11 Sup. Ct., 825, 35 L. Ed., 419."

From these constitutional and statutory provisions and the interpretation given them by the Supreme Court of Louisiana, it will be seen that for a period of 60 days subsequent to the promulgation of the election at which a debt is authorized to be incurred and taxes to pay same authorized to be levied and imposed, any party at interest may attack the validity of the proceedings *for any cause.* After that time, however, the right to institute such a proceeding is barred. This right of attack, "for any cause," means, of course, exactly what that language usually means, that is, that the complainant may assert any ground of illegality, which would include an attack based upon the provision of the Constitution of the

United States. In this connection the language used by this Court in the case of *Cincinnati, N. O. & T. P. R. R. v. Kentucky (Kentucky Railway case), 115 U. S., 321, 336, 29 L. Ed., 414, 418,* is very pertinent:

> "What inquiries may be permitted in such cases, of course, is a matter that depends upon the particular provisions of the law of the jurisdiction. In the absence of such provisions, and as a principle of general jurisprudence, it is safe to say that any defense is admissible which establishes the illegality of the proceeding, resulting in the alleged assessment, whether because it is in violation of the local law which is relied on as conferring the authority upon which it is based, or because it constitutes a denial of a right secured to the party complaining, *by the Constitution of the United States.* The judgments now under review were rendered in just such actions, so that we cannot escape the conclusion that there is no ground for the plaintiffs in error to contend that they have been rendered without due process of law." (Italics ours).

Should there be any doubt as to whether the legality or constitutionality of the formation of the District itself may be called in question in such a proceeding, that doubt is removed when you consider the construction given the Constitution and Statutes by the State Court. In the case of *Roberts v. Evangeline Parish School Board (supra, p. 54)*, the Court specifically stated that the plaintiff attacked the constitutionality

of the statute under which the school district was organized. This would, of course, strike at the very foundation of the organization of the District. In the case of *Hardin v. Police Jury of Vernon Parish (supra, p. 39)*, it will be seen from the statement of the case by the Court that the organization of the District itself was attacked. In that case the Court specifically stated the issues presented to be:

> "The question before the court is simple. Does the 60-day prescription cure *every illegality, every defect* in connection with a political subdivision, or does it cure only the defects specifically provided for in the law?
>
> "In this case, the petition attacks the very existence of the road district. It alleges that the district was never created either as a consolidated road district or as an ordinary road district; it alleges specifically that in creating the district the police jury did not:
>
> "(1) Give notice of intention to create.
>
> "(2) Publish the ordinance creating the district for 10 days.
>
> "(3) Wait 10 days after publication before calling the election.
>
> "(4) Pass an ordinance specifying the existing road districts, their debts, etc.
>
> "In short the petition alleges that there was an omission of every requirement contained in Act 118 of 1921."

In each of these cases the Court held that the 60-day prescription or preemption barred an inquiry as to the constitutionality or validity of the organization of the Districts. Then, clearly, under the construction of the statute by the Supreme Court of Louisiana, the Federal question may be presented, but that question, as well as others, must be raised within the 60-day period provided by the statute.

Counsel for plaintiff in error refer your Honors to the case of *Shautin v. Board of Commissioners of St. Landry and St. Martin Drainage District No. 1, 160 La., 1036*, and under the authority of that case they claim that the 60-day prescription does not apply to the case at bar, for the reason, as counsel contend, plaintiff in error seeks to annul the formation of the District and not the tax, and that the 60-day prescription does not apply to an attack upon the constitutionality or legality of the creation of the District itself.

An examination of that case will disclose the fact that the plaintiffs therein simply sought to have declared illegal the formation of a drainage district. No effort was made to question the validity of the bond issue or the tax voted in that District. The Court concluded that under the language of the Constitution, as the validity or legality of the bond issue and tax was not called in question, the 60-day prescription did not apply and would not bar a suit directed simply and solely at the legality of the District. The Court, however, expressly decided in that case that it was not necessary to pass upon whether prescription would

have applied had an effort been made to have the tax declared null and void. The language of the Court on this question is very clear:

> "The plaintiffs have a right to select their cause of action, and must stand or fall on the cause of action as presented.
>
> "The prescription provided in the statutes to which we have referred, except that provided in Section 2 of Act 238 of 1924, only applies to causes of action which have for their purpose the setting aside of a tax election, a tax levy, or a bond issue, and this is made manifest by the fact that the limitation of such actions begins to run, either from the date of the publication of the ordinance authorizing the bond issue or tax levy, or from the promulgation of the result of the election.
>
> "There is nothing in any of the statutes, except that of 1924, which precludes a party from attacking the ordinance creating a drainage district at any time, *where such attack does not involve the legality or regularity of a tax levy, a bond issue, or an election authorizing the same.*
>
> "After a tax has been levied or a bond issue authorized by an election, *all grounds of attack for any cause after 60 days are closed against the taxpayer, even the right to attack the ordinance creating the district and the power and authority of the Board to levy the tax or issue the bonds under the election.*

"Our conclusion is that, inasmuch as the plaintiffs have limited their cause of action to an attack on the original ordinance creating the district, and have not made any attack on any tax, bond issue, or election held thereunder, the plea of prescription of 60 days is not applicable.

"Nor is the constitutional limitation of 60 days pertinent, for the reason that such limitation in express words only applies to elections held and taxes levied and bonds issued under and by virtue of the Constitution of 1921 and the laws passed in pursuance thereof.

"It will be time enough to consider and determine that question when an attack is made on the election, tax levy and bond issue had under the reorganized district." (Italics ours).

In the case at bar, the plaintiff does seek to have declared illegal and void and to enjoin the payment of the tax levied by the Consolidated Road District, the avails of which are to be used for the payment of the bonds. The language of the prayer of its bill of complaint is conclusive:

"The premises considered, your complainant prays * * * that a temporary restraining order be granted to your complainant restraining the said Tax Collector and the said Road District *from levying, assessing or attempting to collect the said road taxes for the year 1926*, based upon the as-

sessment against its property, and that of the said Shreveport Bridge & Terminal Company in said District and upon a final hearing thereon, that *the action of the said Road District in making the assessment against its property*, and that of the Shreveport Bridge & Terminal Company, within said District be declared illegal and void and *that such assessment be set aside as in violation of due process of law*, or for the reasons hereinbefore set forth, and that a writ of injunction issue directed to the said J. H. Nattin, Tax Collector and to the said Consolidated Road District of Bossier Parish, Louisiana, enjoining and restraining them and each of them *from levying or assessing any special tax or assessment* against the property of your complainant and that of the Shreveport Bridge & Terminal Company and for such other general relief as the complainant may, in good conscience be entitled to under the foregoing facts and law and for all of which it shall ever pray." (Rec., p. 10).

Thus it will be seen that the plaintiff in error *does call in question the validity of the tax.* Such being the case, the rule announced in the *Shautin* case finds no application, and the case at bar falls squarely under the provisions of the Constitution and Laws of Louisiana, as interpreted by our Court in the *Roberts* and *Hardin* cases, with the result that the right of action asserted is one which preempts within the sixty-day period of limitation.

Then the only questions which remain for consideration is whether the time allowed within which to file to contest and the character of the notice are reasonable. That sixty days is a reasonable time is now settled.

In the case of *Lent v. Tillson, 140 U. S., 318, 328, 35 L. Ed., 419, 425,* this Court considered a California statute requiring notice by publication for a period of 30 days, during which time persons complaining might resort to the Courts. It was held:

> "The notice by publication to all who owned property liable to be assesed for the cost of that improvement *was appropriate to the nature of the case* and was reasonable in respect to the length of time prescribed for the publication. And ample opportunity was given to all persons interested to test in a court of competent jurisdiction, the fairness and legality of any assessment proposed to be made upon their property for the purposes indicated by the statute." (Italics ours).

In *Campbell v. Olney, 263 U. S., 352, 67 L. Ed., 1021,* twenty days' notice was deemed sufficient, the Court saying:

> "Plaintiff in error had opportunity to be heard before the City Council and was allowed a reasonable time after the assessment to bring suit to set it aside or to correct it, or any proceedings with reference thereto. He failed to avail himself of the right so given him by the state laws. Their

validity was not drawn in question. His claim that he was denied due process of law is not even colorable."

In *Hagar v. Reclamation District No. 108, 111 U. S., 701, 28 L. Ed., 569, 572*, the Court, in referring to the time allowed for filing of protests, said:

"The law in prescribing time when such complaints will be heard gives all the notice required, and the proceeding by which the valuation is determined, though it may be followed, if the tax is not paid, by a sale of the delinquent's property, is due process of law."

It is equally clear that notice *by publication* is sufficient. The case of *Lent v. Tillson, 140 U. S., 318, 328, 35 Law Ed., 419, 425*, is direct authority for this proposition:

"The notice *by publication* to all who own property liable to be assessed for the cost of that improvement was appropriate to the nature of the case and was reasonable in respect to the length of time prescribed for the publication." (Italics ours).

In *Merchants & Manufacturers National Bank v. Pennsylvania, 167 U. S., 461; 42 Law Ed., 236, 238*, it was stated:

"It is true that the statute contemplates no personal notice to the shareholder, but that has never been considered as essential to due process in respect to taxation."

And in *Davidson v. New Orleans, 96 U. S., 97, 24 L. Ed., 616*, it was said:

> "Whenever by the laws of a state, or by state authority, a tax, assessment, servitude or other burden is imposed upon property for public use, whether to be of the whole state or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person, or such proceedings in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections."

See also:

Paulson v. Portland, 149 U. S., 29, 37 L. Ed., 637.
Londoner v. Denver, 210 U. S., 377, 52 L. Ed., 1112.
Hagar v. Reclamation District No. 108, 111 U. S., 701, 28 L. Ed., 569, 572.

Then it having been established that an opportunity to be heard was afforded plaintiff in error for a period of sixty days subsequent to the promulgation of the election, and that it failed to take advantage of the opportunity, the situation now is that the State statutes of limitations are applicable and bar the inquiry into the legality of this tax. The plaintiff in error has enjoyed full and free opportunity to be heard.

It has slept upon its rights. There has been no deprivation of its property without due process of law, and the Fourteenth Amendment finds no application here.

B.

HIGHWAYS A COMPETING SYSTEM.

The above argument applies to the alleged unconstitutionality of the tax on the ground that the highway is a competing system, for in the last analysis, this allegation amounts to claim of want of benefits. For the reasons above urged, we respectfully submit that this question should not be considered by the Court as an independent ground of attack.

Should your Honors conclude to give consideration to this complaint, and consider the merits of the contention, we then submit that the imposition of a tax of this character for the construction of highways does not constitute a taking of property without due process of law. A recent decision of this Court, rendered in the case of *Branson v. Bush, 251 U. S., 182, 64 Law Ed., 215, 221,* is conclusive on this question.

In that case the Court considered the validity of a tax levied by Crawford County Road Improvement District No. 2 of the State of Arkansas, and held that for the purposes of the assessment the value of franchises of the railroad company might be taxed for road purposes. For the convenience of the Court we quote at length from this opinion:

> "Where in laws creating road districts for local improvements and taxation there is such a legislative declaration as this, as to

what lands within the district will be benefited by the improvement, the law with respect to the extent to which such determination may be reviewed by the courts is so well settled, and has so lately been re-examined and restated by this court, that extended discussion of the subject is not justified.

"In Spencer v. Merchant, 125 U. S. 345, 31 L. Ed., 763, 8 Sup. Ct. Rep., 921, * * * a decision often cited and approved * * * it is decided that if the proposed improvement is one which the state had authority to make and pay for by assessments on property benefited, the legislature, in the exercise of the taxing power, has authority to determine, by the statute imposing the tax, what lands, which might be benefited by the improvement, are in fact benefited by it; and if it does so, its determination is conclusive upon the owners and the courts, and the owners have no right to be heard on the question whether their lands have been benefited or not.

"The subject was carefully re-examined and the law restated in cases so recent as Philip Wagner v. Leser, 239 U. S. 207, 60 L. Ed. 230, 36 Sup. Ct. Rep. 66, and Houck v. Little River Drainage District, 239 U. S. 254, 60 L. Ed. 266, 36 Sup. Ct. Rep. 58, with the result that the rule as we have stated it was approved, with the qualification, which was before implied, that the legislative determination can be assailed under the 14th

Amendment only where the legislative action is 'arbitrary, wholly unwarranted,' 'a flagrant abuse, and by reason of its arbitrary character a confiscation of particular property.' And see Withnell v. Ruecking Constr. Co., 249 U. S. 63, 69, 63 L. Ed. 479, 39 Sup. Ct. Rep. 200; Hancock v. Muskogee, 250 U. S. 454, 457, 63 L. Ed. 1081, 1083, 39 Sup. Ct. Rep. 528; Embree v. Kansas City and L. B. Road Dist. 240 U. S. 242, 250, 60 L. Ed. 624, 628, 36 Sup. Ct. Rep. 317.

"The decisions relied upon by the Company (Norwood v. Baker, 172 U. S. 269, 43 L. Ed. 443, 19 Sup. Ct. Rep. 187, Myles Salt Co. v. Iberia & St. M. Drainage District, 239 U. S. 478, 60 L. Ed. 392, L. R. A. 1918E, 190, 36 Sup. Ct. Rep. 204; Gast Realty & Investment Co. v. Schneider Granite Co., 240 U. S. 55, 60 L. Ed. 523, 36 Sup. Ct. Rep. 254) are not in conflict with the rule, but plainly fall within, and are illustrations of, the qualification of it.

"An application of this rule to the case before us renders not so difficult the decision of the second assignment of error.

"The road to be improved was 'a little less than 3½ miles in length,' and extended from Alma, a considerable village, on the north, southerly to an east and west road which had its western terminus at the city of Van Buren, 8 miles west of the junction of the two roads. It was the principal road to and from Alma, the travel on it being

greater than on all the other roads which served that village combined. In wet seasons the road was practically impassable for wagons, sometimes for three or four months together. People living south of the east and west road, who made Van Buren their trading point in wet weather, after the road was improved traded exclusively at Alma, it being 4½ miles nearer for many of them. The railway of the appellee was the only one at Alma, but at Van Buren there was a competing road with a line of 250 miles shorter than that of the appellee to St. Louis, the chief market for the staples of the region.

"On the question of benefits which would come to the railroad property from the construction of the road, the appellee receiver called four witnesses, three of them engineers and one a superintendent of the company. Two of these were familiar with the location of the road and the other two testified that they knew of its location in a general way. All four testified in general terms that the road was not and never would be of any benefit to the railroad. It is significant that no traffic man was called, and that no evidence was introduced showing the extent of business done at Alma before and after the improvement of the road.

"For the District, three witnesses were called, one a doctor, one a merchant, and one a long-time resident of the village of Alma. Each of these testified that, in his opinion,

the road, by making the village of Alma more accessible, particularly in the wet seasons of the year, and by developing the adjacent country, would increase the business of the railway company, and would divert business from Van Buren, where there was a competing railroad, to Alma, where appellee had the only line. It was in evidence also that after the act was passed, but before the road was completed, a large gas-producing district was discovered not far south of the southern terminus of the improved road, which was tributary to it.

"To this must be added the obvious fact that anything that develops the territory which a railroad serves must necessarily be of benefit to it, and that no agency for such development equals that of good roads.

"This discussion of the record makes it clear that it is impossible to characterize as arbitrary, capricious, or confiscatory the action of the general assembly in declaring that the property of the railroad company within the District would be benefited by the construction of the contemplated road improvement, but, on the contrary, it makes it apparent that the case is one so fully within the general rule that the holding of the circuit court of appeals that the railroad would no be benefited by the improvement cannot be sustained."

From an examination of the affidavits submitted in this case it will be seen that Messrs. McDade, Tay-

lor, Nattin and Whittington, all public officials of the Parish of Bossier, state that the building of these roads will, in fact, improve conditions in the parish and will increase the traffic of the railroad. (Rec., pp. 70, 72). You have, therefore, practically the same situation before you in this case as was presented in the *Branson-Bush* case, and we submit that, as the Court stated in that case, it is obvious that the building of these roads, which will provide practically a complete system in the parish, will be of benefit to all property in the District.

We particularly ask that your Honors note that the plaintiff in error nowhere alleges arbitrary abuse or fraud on the part of the officials, and without such an allegation this Court has held that it will not inquire into the validity of the assessment.

A quotation from a decision of the Supreme Court of the United States in the case of *Kansas City Southern Railway Company v. Road Improvement District No. 3, 266 U. S., 379, 69 Law Ed., 334, 341*, states clearly the correct doctrine:

> "By a long list of decisions in this court it has been settled that, where the state Constitution, as construed by the state Court of last resort, does not provide otherwise, the legislature of a state may require that the cost of a local public improvement, such as the construction or reconstruction of a public road, be distributed over the lands particularly benefitted, and charged against them

according to their value, their area, or the benefits which they will receive; may itself determine what lands will be benefited and in what proportions they will share in the benefits; and may avail itself, for the purposes of that determination, of any information which it deems appropriate and sufficient, including such as may be afforded by reports and estimates made in prior assessment proceedings having the same object. Only where the legislative determination is palpably arbitrary, and therefore a plain abuse of power can it be said to offend the due process of law clause of the 14th Amendment. Spencer v. Merchant, 125 U. S. 345, 355-357, 31 Law Ed. 763, 767, 768, 8 Sup. Ct. Rep. 921; French v. Barber Asphalt Paving Co., 181 U. S. 324, 338, *et seq.*, *45 L. Ed. 879*, *887*, *21* Sup. Ct. Rep. 625; Houck v. Little River Drainage District, 239 U. S. 254, 262, 265, 60 Law Ed. 266, 273, 274, 36 Sup. Ct. Rep. 58; Myles Salt Co. v. Iberia & St. Mary Drainage District, 239 U. S. 478, 481, 60 L. Ed. 392, 394, L. R. A. 1918E, 190, 36 Sup. Ct. Rep. 204; Branson v. Bush, 251 U. S. 182, 189, 64 L. Ed. 215, 220, 40 Sup. Ct. Rep. 113; Valley Farms Co. v. Westchester County, 261 U. S. 155, 163, 67 L. Ed. 585, 590, 43 Sup. Ct. Rep. 261. And only where there is manifest and unreasonable discrimination in fixing the benefits which the several parcels will receive can the Legislative determination be said to contravene the equal protection clause of that amendment. Kansas City Southern

R. Co. v. Road Improvement Dist., 256 U. S. 658, 65 L. Ed. 1151, 41 Sup. Ct. Rep. 604; Thomas v. Kansas City Southern R. Co., 261, U. S. 481, 67 L. Ed. 758, 43 Sup. Ct. Rep. 440.

"To justify an assessment of benefits to particular lands it is not essential that the benefits be direct or immediate (Valley Farms Co. v. Westchester County, *supra);* but it is esential that they have a better basis than mere speculation or conjecture (Kansas City Southern R. Co. v. Road Improvement District, *supra).* In the case of railway property they may consist of gains from increased traffic, reasonably expected to result from the improvement. Thomas v. Kansas City Southern R. Co. *supra;* Branson v. Bush, 251 U. S. 182, 189, 64 L. Ed. 215, 220, 40 Sup. Ct. Rep. 113."

See also:

Missouri-Pacific Ry. v. Western Crawford Road Improvement Dist., 266 U. S., 187; 69 Law Ed. 237.

Mount St. Mary Cemetery Association v. Mullins, 248 U. S., 501; 63 Law Ed., 383.

We respectfully submit that, even if your Honors consider the merits of the plaintiff's case, the plaintiff is not entitled to the relief which it seeks as it has failed to show taxation without benefits.

C.

INEQUALITY OF ASSESSMENT.

When you come to consider the charge made by the plaintiff in error that its railroad is assessed at cash valuation, whereas the property of other taxpayers in the District is assessed at less than cash valuation, and therefore it is being discriminated against unjustly, we first point out to the Court that in the bill of complaint (Rec., p. 6) this is alleged to constitute a deprivation of property without due process of law. Section 1 of the 14th Amendment to the Constitution of the United States is referred to and inequality is alleged, and it, therefore, may be that plaintiff in error intended to allege that it was being deprived of the equal protection of the law.

We submit that plaintiff in error's pleadings are not sufficiently definite to bring it within the claim of a deprivation of the equal protection of the law, and that for this reason your Honors should not consider this question.

Should your Honors, however, conclude that the pleadings are sufficiently broad to embrace a claim of deprivation of the equal protection of the law, we then submit that the claim of such deprivation is fully answered by the opinion of this Court rendered in the case of *Cincinnati N. O. T. & P. R. R. Co. v. Kentucky, 115 U. S., 321, 324, 29 Law Ed., 414, 416.* In that case assessments of railroad properties had been made by the Board of Railroad Commissioners of Kentucky. The statute required the railroad companies to return under oath to the Auditor of Public Accounts, a state-

ment showing the physical properties of the railroads in the State and their average values. The Board of Railroad Commissioners were then required to fix the valuations for assessment purposes. The Board kept a record of all proceedings. It was claimed that the assessment of railroad property was higher than that of individuals, which denied the equal protection of the law. This Court, however, said:

> "The discrimination against railroad companies and their property, which is the subject of complaint as being unjust and unconstitutional, arises from the fact that, in the legislation of Kentucky on the subject, railroad property, though called real estate, is classed by itself as distinct from other real estate, such as farms and city lots, and subjected to different means and methods for ascertaining their value for purposes of taxation, and differing as well from those applied to the property of corporations chartered for other purposes, such as bridge, mining, street railway, manufacturing, gas and water companies. These latter report to the auditor the total cash value of their property, and pay into the treasury as a tax, upon each one hundred dollars of its value, a sum equal to the tax collected upon the same value of real estate; and their reports and valuations are treated as complete and perfect assessments, not subject to revision by any board or court, and conclusive upon the taxing officers.
>
> "But there is nothing in the Constitution of Kentucky that requires taxes to be

levied by a uniform method, upon all descriptions of property. The whole matter is left to the discretion of the legislative power, and there is nothing to forbid the classification of property for purposes of taxation and the valuation of different classes by different methods. The rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances. There is no objection, therefore, to the discrimination made as between railroad companies and other corporations in the methods and instrumentalities by which the value of their property is ascertained. The different nature and uses of their property justify the discrimination in this respect which the discretion of the Legislature has seen fit to impose. * * *

"We have already decided that the mode of valuing railroad property for taxation under this statute is due process of law. That being so, the provision securing the equal protection of the laws does not require, in any case, an appeal, although it may be allowed in respect to other persons differently situated. This was expressly decided by this court in the case of Missouri v. Lewis, 101 U. S. 22, 30 (Bk. 25 L. Ed. 989, 992). It was there said by Mr. Justice Bradley, delivering the opinion of the court and speaking to this point, that 'the last restriction, as to the equal protection of the laws, is not violated

by any diversity in the jurisdiction of the several courts, as to subject matter, amount or finality of decision, if all persons within the territorial limits of their respective jurisdictions have an equal right, in like cases and under like circumstances, to resort to them for redress.' The right to classify railroad property as a separate class for purposes of taxation grows out of the inherent nature of the property and the discretion vested by the Constitution of the State in its Legislature, and necessarily involves the right, on its part, to devise and carry into effect a distinct scheme, with different tribunals, in the proceeding to value it. If such a scheme is due process of law, the details in which it differs from the mode of valuing other descriptions and classes of property cannot be considered as a denial of the equal protection of the laws."

Further on this question, we respectfully point out to your Honors the following:

The general rule of law is:

"Equity will not assume jurisdiction to grant relief by injunction, or otherwise, in tax cases if there is an adequate remedy at law. * * * This rule applies equally well where the ground for enjoining an excessive assessment is that of fraud."

Cooley on Taxation, Vol. 4, Fourth Edition, p. 3323, Section 1646.

It is also the rule that:

> "While an excessive levy may be enjoined, yet for 'excessive assessments,' where fraud is not charged, there can, generally speaking, be no relief in equity. The remedy must be such as the statute has given. In other words, assessments cannot be disturbed by the courts unless fraudulent or illegal, and alleged overvaluation, where not so excessive as to be constructively fraudulent, and where there is no actual fraud but instead merely an honest mistake of judgment, cannot be corrected by a court of equity. Valuation will not be interfered with unless so grossly excessive as to be inconsistent with an exercise of honest judgment, or so unequal and discriminating as to violate the fundamental law of the land. This applies not only to valuation by an asessor but also to any valuation made by a state board or change of valuation by a board of equalization."
>
> *Id. Page 3337, Section 1650.*

The above rule of law has been approved by the Supreme Court of the United States in the case of *Chicago, Burlington & Quincy Railway Co. v. Babcock, 204 U. S., 585; 51 L. Ed., 636,* where is was stated (syllabus):

> "A federal court will not enjoin the collection of state taxes on railroad property because of undervaluation of other taxable property in the state, where such inequality

is not the result of a scheme or agreement among the taxing officials."

See also *Union Pacific v. Christensen, 275 Fed., 6*, where it was said:

> "To set aside a discriminatory assessment for taxes it must appear that the discrimination in favor of one class of property, or other classes as against others, was intentional and systematic."
>
> *Kelly v. City of Pittsburgh, 104 U. S., 78; 26 L. Ed., 658.*
>
> *Hazard v. O'Bannon, 38 Fed., p. 220.*
>
> *Lacey v. McCafferty, 215 Fed., 352.*
>
> *Puffer Manufacturing Co. v. Robertson, 248 Fed., 463.*

Then, in order that this plaintiff in error may set forth a cause of action to attack the assessment of its property, it must allege that this erroneous assessment was systematic and made with the idea of injuring it. This allegation is nowhere contained in the bill of complaint. The allegation merely is that complainant's property is assessed at practically its cash value, whereas the farm lands in the District "are assessed at a much lower rate, and thereby in any event discriminates against your complainant." (Rec., p. 6). Thus complainant has failed to allege that this action was the result of a scheme, or fraud, and until and unless it has made such allegations this Court may not hear the complaint.

Furthermore, plaintiff in error must, as a prerequisite to the launching of an action of this char-

acter, allege that it has sought redress at the hands of the proper state officials.

It is the rule that:

> "If there is a remedy provided by statute by appeal to a board of equalization, or other board, with power conferred on such board to correct the assessment in respect to the objection complained of, resort to such remedy is necessary before seeking relief by injunction. * * *. In case of an unjust assessment a court ordinarily cannot intervene before exhaustion of the remedy before statutory boards of review."
>
> *Cooley on Taxation, Vol. 4, Fourth Ed., pp. 3329-30, Sec. 1648.*

In the case of *Altschul v. Giddings, 86 Fed. Rep., 200*, it was held by the Circuit Court of Oregon, that:

> "* * * a person who is aggrieved by the wrongful action of an assessor, in the valuation of his own or other property for taxation, cannot maintain a suit in equity to enjoin the collection of any portion of the tax resulting from such action unless he first seeks redress at the hands of the county board of equalization as provided by statute. Where the laws of a state create a tribunal for the correction and equalization of assessments, and confer upon such tribunal power to grant relief to aggrieved persons, it is for the Supreme Court of the state to determine whether the statutory remedy is exclusive or whether it is only cumulative, and its

action in that respect raises no federal question."

Dundee Manufacturing Co. v. Charlton, 32 Fed., p. 192.

The Legislature of Louisiana has created tribunals for the purpose of making assessments and equalizing them. Prior to 1916 the railroads in the State were assessed by the State Board of Appraisers, which Board assessed the property belonging to public service corporations, including railway corporations. *(Act 122 of 1900).* This Board was authorized to make and correct assessments and valuations of property belonging to these corporations. Such assessment was final unless reduced or changed by suit instituted before the 1st day of November of each year *(Section 7, as amended, of Act 70 of 1904).*

By *Act 211 of 1918* the Board of State Affairs, now the Louisiana Tax Commission, was vested with the power and authority theretofore exercised by the State Board of Appraisers, this Board being authorized (under *Section 10, as amended, of Act 211 of 1918)* to fix and equalize the value of all property for the purpose of assessing State taxes, and by *Act 120 of 1918* the Louisiana Tax Commission (then called the Board of State Affairs) was authorized to correct, or change, the assessment of any public service corporation, or other property, made directly by the Commission. That Board actually fixed the value of the railroad belonging to plaintiff in error, for assessment purposes in 1926, after a full hearing. (Rec., pp. 58-59).

The assessment of other property in the State is made by the Assessor, and before this assessment is made the taxpayer is required to make a return of the value of his property *(Section 14 of Act 170 of 1898)* and upon his failure so to do then the Assessor values the property. After the Assessor has made a list of the property to be assessed, and the valuation thereof, he gives notice by publication in a newspaper that the listing and valuation has been completed. *(Section 22 of Act 170 of 1898).*

The Legislature has also provided for the creation of the Parish Board of Equalization, which Board meets on the first Monday of May of each year, examines the assessments of property as fixed by the Assessors and equalizes the assessments. Taxpayers are authorized to appear before that Board. *(Act 231 of 1920).* After these rolls are completed they are then filed with the Louisiana Tax Commission by the Assessor and passed upon by the Tax Commission under the authority of *Section 10 of Act 222 of 1918*, and again the taxpayer has a hearing before the Commission. In addition to the above the Police Juries of the State are required to meet on the first Monday of June of each year for the purpose of sitting as a Board of Reviewers of assessments *(Act 194 of 1906)* and when they meet as a Board of Reviewers they are required:

> "To carefully examine and scrutinize the lists as prepared and filed by the Assessor, and to compare each individual item of assessment with the others, considering the value placed on same, and, after hearing evi-

dence concerning same, determine if said valuations are equitable and just and in accord with the requirements of the Constitution, and either approve or disapprove the said assessment list."

Further, any property taxpayer who may desire to protest the correctness of the valuation placed by the Assessor upon property owned by him may file such a protest. *(Section 24 of Act 170 of 1898, as amended by Act 63 of 1906).*

It is further the law of Louisiana that any taxpayer in the State, who has made a return, may institute a suit in Court for the purpose of protesting the correctness or legality of any assessment. *(Act 97 of 1924).*

Thus it will be seen that the State of Louisiana has provided the machinery for a hearing in matters of this kind, and has allowed the taxpayer thirty (30) days (under the provisions of *Act 97 of 1924)* subsequent to the filing of the rolls within which to resort to the Courts. If this plaintiff in error desired to urge any objection to these assessments, it should have appeared before these Boards and should have filed its suit within the time prescribed by the statute. Unless and until it had exhausted its remedy before the executive branch of the State, it has no standing in the Courts. Having failed to allege that it had so exhausted its remedy before the Boards, it has no standing in this Court to question the correctness of the assessment.

The District Court, in disposing of this issue, said:

> "(4) The assessment laws of the State afford taxpayers full opportunity to be heard upon the valuation and amount of their assessments. In fact, public service corporations like the complainant, are assessed, after full hearing if desired, by a state board known as the Louisiana Tax Commission, which presumably is not influenced by local conditions. For thirty days after the filing of the final assessment rolls the taxpayer is permitted to go into the Courts for the purpose of contesting his assessment and if not done within that time, then he is expressly precluded from doing so thereafter. Act 97 of 1924. We think this provision reasonable for the state is entitled to fix some time after which the right to collect taxes for its own alimony and that of its subdivisions will be set at rest, and unless the provision is (fol. 117) unreasonable, we see no reason why anyone should have a right to complain if they fail to avail themselves of that privilege. See authorities cited above." (Rec., p. 88).

In this conclusion that Court is supported by decisions of this Court, one of the latest being that of *Valley Farms Company v. Westchester County, 261 U. S., 155; 67 Law Ed., 585*, wherein the Court passed upon the validity of taxes levied for the purpose of constructing sewers, which taxes, as the Court stated, were "based wholly upon assessed valuation for general purposes. Each lot is taxed according to value

and irrespective of benefits received. No power is conferred to reduce assessments in one section not benefited equally with the others." The Court dismissed the complaint, stating:

> "The State Courts held that, as the rolls of local assessors are adopted for taxing property within the district, the right of owners to be heard as to values is adequately protected; and we think that, under the circumstances, they can demand no more."

The same situation is presented in this case. The assessed value of this property is fixed by a Board created for that purpose after a hearing. If plaintiff in error desired to contest the assessment it should have proceeded within the time allowed by law.

In an earlier case, that of *Hagar v. Reclamation District No. 108, 111 U. S., 701, 710; 28 L. Ed., 569, 572*, the Court, in speaking of the action of assessors in fixing valuations of property, said:

> "But where a tax is levied on property, not specifically but according to its value, to be ascertained by assessors appointed for that purpose upon such evidence as they may obtain, a different principle comes in. The officers, in estimating the value, act judicially, and in most of the States provision is made for the correction of errors committed by them, through boards of revision or equalization, sitting at designated periods provided by law, to hear complaints respecting the justice of the assessments. The law in prescribing the time when such complaints will be heard,

gives all the notice required, and the proceeding by which the valuation is determined, though it may be followed, if the tax be not paid, by a sale of the delinquent's property, is due process of law."

It has also been said by this Court that:

"It has long been settled that the due process clause does not preclude a State from taxing the intangible property of a railroad, or from ascertaining its value, substantially in the manner prescribed by the statute herein assailed; that the equal protection clause is not violated by prescribing different rules of taxation for railroad companies than for concerns engaged in other lines of business."

Baker v. Druesedow, 163 U. S., 137; 68 Law Ed., 212, 214.

We respectfully submit that on the ground of disparity of assessment, the position of the plaintiff in error presents no meritorious ground for any equitable relief.

D.

BURDEN ON INTERSTATE COMMERCE.

We feel that a mere quotation from the opinion of the District Court in disposing of this contention is sufficient. That Court said, (Record page 89):

"We are of the opinion that the contention that the taxes in question imposed an undue burden on interstate commerce is without merit. The same argument could

with equal force be applied to any tax levied upon the physical property of a common carrier located within the State or within one of its taxing districts. Besides, both as to this question and the one immediately preceding, complainant has alleged its willingness to pay the ordinary state and parish taxes upon the basis of this same assessment and gives us its reason for not doing so the refusal of the tax collector to accept the same."

II.

ILLEGALITY UNDER THE STATE STATUTE.

On this branch of the case the plaintiff in error claims

A. That this District was created in violation of the State law in that practically the whole Parish was included therein; and

B. That in any event the rate of taxation is excessive and should be reduced to fixe mills.

A.

A sufficient answer to the first contention above urged is that the right to call in question the legality of the creation of the District on any ground is precluded by the sixty (60) day pre-emption or prescription provided for in paragraph (n) of Section 14 of Article XIV of the Constitution of 1921 and Section 43 of Act 46 of 1921. We have heretofore fully referred to those sections and to the decisions of our Court interpreting same (Brief, pages 51 to 63), and

feel that it is not again necessary to quote the provisions of those statutes of limitation or the language wherein the Court of Louisaina has expressly decided that the validity of the organization of a Consolidated Road District may be called in question after the sixty (60) days have expired from the date of the promulgation of the election. *Hardin v. Police Jury of Avoyelles Parish, 155 La., 899*, and other cases.

Clearly this construction given the State statute is binding upon this Court, and therefore the merits of this ground of attack may not be inquired into.

Should this Court, however, conclude to consider the question, we then call to the attention of your Honors, as the District Court has pointed out (R. p. 80) that an amendment was adopted to the Constitution of Lousiiana on November 4, 1924, wherein the language of the Constitution was changed, and that under the Constitution as it now exists, Road Districts may be created from the whole Parish. Therefore no question of public policy is involved, as the Constitution of Louisiana now recognizes the right of a police jury to create a Road District from the whole of the Parish.

While counsel for the plaintiff in error admits that the Constitution has been changed, they contend that the Legislature has the power to fix the terms and conditions upon which a Road District may be created, and that as under the Act 118 of 1921 it is expressly provided that no Consolidated Road District shall in-

clude the entire territory of a parish, the statute would control and not the constitutional provision. Our first answer is that the pleadings do not attack the formation of the District on the ground that it violates this statute, but on the ground that it violates the Constitution. (Rec., p. 5). Then the grounds of attack which may be argued are only those which are set forth in the bill of complaint, and as the bill of complaint does not specifically urge the objection that the creation of the District violates the statute, this contention of the complainant should not be considered by the Court.

Should the Court, however, desire to consider the question, then we point out further that the only inhibition in the statute is that: "No Consolidated Road District shall, however, comprise the entire territory of a Parish." Then, we submit, that as long as this Police Jury did not embrace the entire territory of the parish within this Consolidated Road District it did not violate the statute. There is no contention here that the Police Jury did embrace the entire territory of the Parish. As a matter of fact, about 25,000 acres of land were omitted from the District.

The evidence before this Court (Rec., pp. 51-52) shows that this District was created after a hearing and after published notice. Under such circumstances, will this Court, in the absence of proof of fraud, substitute its judgment for that of the Police Jury in determining what portion, or what proportion, of the Parish of Bossier should have been included in this

Consolidated Road District? We do not believe that your Honors will assume any such authority. The rule of law, as announced by the Supreme Court of the State of Louisiana, in construing the laws governing the formation of School Districts, in the case of *Burnham v. Police Jury of Claiborne Parish, 107 La., 513, 516*, is that:

> "* * * the matter of fixing the limits of school districts has been confided by the statute to the School Boards, and that the discretion thus confided cannot be controlled by the courts."

In the case of *Drouin v. Board of Directors of Public Schools, Parish of Avoyelles, 136 La., 393*, our Court has expressly held (syllabus):

> "The Board of Directors of Public Schools of several Parishes of the State of Louisaina are given full discretion to establish school districts in their respective Parishes and their action in establishing the boundaries of a school district will not be reviewed by the Courts where it is not shown that the discretion vested in the Board has been abused."

In this case the question of determining what lands should or should not be included in the District was one which the Police Jury was called upon to decide. The plaintiff's railroad was within two of the existing Road Districts, which were, of necessity, under the statute, to be incorporated in the Consoli-

dated Road District. The question for the Police Jury to decide was what additional territory was to be included in the District. The Police Jury passed upon that question and included the additional territory. It made no difference whether more or less additional territory was included in so far as concerns this complainant, for the property of this plaintiff was already in the two Road Districts which were to be consolidated, and even if no other territory had been included in the Consolidated Road District this complainant's road would have been in the District. Therefore, the plaintiff would not have been injured, regardless of the action of the Police Jury. This inclusion of more or less territory did not affect the taxes to be paid by plaintiff, for such additional territory will pay its proportion of the taxes and will have borne its proportion of the expenses. Therefore, the inclusion of this territory in the Consolidated Road District could not and did not injure this complainant, nor is this plaintiff actually claiming that the action of the Police Jury did, in fact, injure it.

Then, as the Police Jury was vested with the authority under the law to pass upon the question, and as it exercised that discretion, and especially as this plaintiff has not been injured by the manner in which it was exercised, but is relying simply and solely upon a technical ground, we respectfully submit that this Court should not substitute its judgment for that of the Police Jury (the authority vested by the Constitution of Louisiana with the power to pass upon this question) and hold that the action of the Police Jury was not in conformity with the law of Louisiana.

Your Honors should bear in mind that the plaintiff does not claim that this action deprives it of any right under the Constitution of the United States. It simply says that this act of the Police Jury did violence to the Constitution of Louisiana—your Honors are therefore called upon to construe the Constitution of Louisiana in passing upon this question and not the Constitution of the United States.

We submit as a further answer to the contention that the Constitution of Louisiana was violated, that the Court cannot consider in this proceeding this alleged invalidity for the reason that as presented, this is nothing more than a collateral attack upon the creation of the District. This may not be done in this proceeding where the tax only is sought to be enjoined. The Police Jury created this District. It is not before this Court. It is contended that this tax is illegal because the District was not properly created. The District is now actually operating. It has actually levied and collected taxes, and it is actually building roads. This plaintiff says the District is illegally created and therefore the tax should not be imposed, then, of necessity, in order to hold the tax to be illegal on this ground, your Honors must first determine that the district was improperly created. This calls in question the acts of the Police Jury of the Parish of Bossier, which body is not before the Court, and requires this Court to decree illegal its act in creating the District. This constitutes a collateral attack upon the District, which we submit should not be heard in a proceeding of this character.

B.

The District Court disposed of the contention that seven mills on the dollar for the year 1926 was an excessive levy, in the following manner:

> "It is shown that the bonds were all dated March 1st, 1926, and that the interest thereon was payable semi-annually on the first days of March and September of each year. Therefore, the first payment of interest had to be made on September 1, 1926, and the second on March 1, (fol. 109a) 1927. The Court will take cognizance of the fact that assessments of property in the State of Louisiana are made in the spring and summer of the year in which taxes are collected and that no collection of taxes is made until the rolls are filed in the fall. Hence it was not possible to levy and collect the taxes to pay at maturity the installment of interest falling due on March 1, 1927, upon the tax roll of that year. What the Police Jury did was to levy sufficient taxes upon the assessment of 1926 to pay the interest maturing September 1, 1926, and March 1, 1927. We do not believe that the language of the Constitution and of the statute, which are practically the same, providing that the 'Subdivisions shall impose and collect annually, in excess of all other taxes, a tax to pay the interest accruing annually or semi-annually, and the principal falling due each year', is susceptible of the construction that the money collected upon the rolls of a particular year must be

devoted solely to the payment of amounts maturing within that calendar year. Both the framers of the Constitution and the members of the Legislature, it must be assumed, were aware of the facts above related with respect to the assessment and collection of taxes and that circumstances might be such that the principal and interest, since the latter was expressly permitted to be made payable semi-annually, would mature just in the manner and at the time as were adopted in this instance, and that it would not be possible to timely collect on the assessment of any year the money to pay installments falling due from, say the first of January to the filing of the tax rolls. It is not contended, and as a matter of fact there has not been imposed a greater tax upon the assessment of the year 1926 than was sufficient to pay the principal and interest upon the bonds maturing (fol. 110) within the period of one year. In other words, the burden of the taxpayer for the year 1926 is no greater than if the interest had been payable annually and the levy of 1926 had been made to pay the interest maturing at the end of the year. There had to be a beginning and hereafter and until the bond issue is discharged the taxpayer will no doubt pay the princpial and interest as they become due." (Record Pages 81 and 82).

We feel that nothing can be added to this statement by the District Court.

We respectfully submit that the opinion and the decree of the three judges of the District Court are in all respects correct, and that the decree of that Court should be affirmed.

All of which is respectfully submitted.

MILLING, GODCHAUX, SAAL & MILLING,
A. M. WALLACE,
Solicitors for the Defendant in Error.

ROBERTS C. MILLING,
A. M. WALLACE,
R. E. MILLING, JR.,
Of Counsel.

February 20, 1928.